

No. 12886

United States
Court of Appeals
for the Ninth Circuit.

CITIZENS NATIONAL TRUST & SAVINGS
BANK OF LOS ANGELES, Appellant,
vs.

J. B. LONDONO, DULIEN STEEL PRODUCTS,
INC., OF CALIFORNIA and DULIEN
STEEL PRODUCTS, INC., Appellees.

And

DULIEN STEEL PRODUCTS OF CALIFOR-
NIA and DULIEN STEEL PRODUCTS,
INC., Appellants,
vs.

J. B. LONDONO and CITIZENS NATIONAL
TRUST & SAVINGS BANK OF LOS
ANGELES, Appellees.

Transcript of Record
In Eight Volumes

Volume III
(Pages 943 to 1422)

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Southern District of California,
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Central Division.**

(Testimony of James E. Sweeney.)

Cross-Examination

By Mr. Diether:

Q. When were you first employed by Mattoon & Company? [1140] A. October, 1942.

Q. Have you been in the freight forwarding business prior to that time? A. Yes.

Q. What had been your experience?

A. I had been a clerk in San Francisco for one year for a traffic firm there.

Q. What kind of a firm?

A. Traffic, traffic management firm, known as Bishop & Bailey.

Q. What kind of a business did they have?

A. They handled auditing of freight bills, expediting of freight, and also foreign freight forwarding.

Q. Had you had experience in handling shipping documents prior to the time you went to Mattoon & Company? A. Yes.

Q. How long had you had such experience?

A. About nine years.

Q. So you started in 1933?

A. Yes. I worked on the Southern Pacific Railroad, that is the first job I had, and I worked in their freight departments up until the time I moved into the forwarding business.

Q. Would you say then since 1933 until 1946, you had been experienced in handling bills of lading on shipments by [1141] rail as well as ocean carrier?

A. Yes.

Q. You stated that you first had contact with

(Testimony of James E. Sweeney.)

Mr. Londono in connection with this transaction about two weeks prior to July 29, is that correct?

A. Yes.

Q. Did he come to your office? A. Yes.

Q. And what conversation did you have with him at that time?

A. He came to say that he believed he had found a supply of barbed wire, which was the purpose for which he had come to this country, and was at present negotiating with Dulien Steel to purchase it.

Q. Did he see you again after he had actually purchased the wire from Dulien Steel?

A. Yes.

Q. Was that a few days later?

A. Well, the purchase date—I don't know the purchase date agreement.

Q. Did he show you a copy of his contract with Mr. Dulien? A. No.

Q. Did he ever tell you how much wire he had purchased? [1142]

A. He said approximately 2000 tons.

Q. He never told you anything more than 2000 tons?

A. He mentioned the total shipment being 2300 or 2700 tons.

Q. That is all that you ever heard?

A. Yes.

Q. Did he ask you to reserve any space?

A. No, it was too early to tie up any space.

Q. I am speaking about the time after he actually purchased it from Dulien.

A. The instructions were that we were going to

(Testimony of James E. Sweeney.)

move a certain portion, 500 tons, to Cartagena and the balance to Buenaventura, but that that all depended on the arrival of the ship from Honolulu.

Q. When did he first give you instructions to reserve space?

A. He didn't give me any specific instructions. He left it up to me.

Q. Did you make any such reservations?

A. As soon as I knew when the White Squall was going to be in and discharging I went ahead.

Q. When did you make the first reservation for space? A. I don't remember.

Q. Was it prior to July 26? A. No. [1143]

Q. Was it prior to July 27?

A. It might have been about July 27, 28. There was a strike pending at the dock and we just couldn't move to do any booking or anything else.

Q. What space did you reserve?

A. Tentatively 500 tons on the Moore-McCormack.

Q. What boats?

A. Well, there were two shipments that went out and it didn't matter which one. They were both leaving about the same time.

Q. Did you get a definite commitment for a certain tonnage on any particular vessel? A. No.

Q. Did you ever receive any commitment as to any definite tonnage on any particular vessel?

A. No, we had a tentative offer and were protected for the space, then the steamship company left it up to us to cooperate to tell them as soon as possible how much we could actually offer.

(Testimony of James E. Sweeney.)

Q. Did Mr. Londono say anything to you about the shipping documents—well, this is all prior to July 27, when he first came to see you in connection with the reshipment of the wire to Colombia?

A. He merely advised that he would give me the names of the consignees when he was ready. [1144]

Q. Did he ever tell you about how you were going to get delivery of the wire?

A. Well, he didn't have to. He knew what we needed——

Q. Just answer my question. Did he?

A. No.

Q. He did not?

A. What is the question, please?

Mr. Diether: Read the question.

(The question referred to was read by the reporter as follows: "Q. Did he ever tell you about how you were going to get delivery of the wire?")

The Witness: No.

Q. (By Mr. Diether): Did he ever mention the fact that he was going to get a bill of lading from Dulien? A. No.

Q. He never mentioned that at all? A. No.

Q. Did he mention anything about the character of the bill of lading that he was going to get from Dulien, whether it would be clean or not?

A. No.

Q. Or whether it would be order?

A. No. [1145]

Q. Did you have any conversation with Mr. Lon-

(Testimony of James E. Sweeney.)

dono prior to July 27, with respect to when you would know that he had purchased the wire or when he was going to be able to get possession of it?

The Court: Which one do you want to know? You have two questions there.

Mr. Diether: Let's make it with respect to when he was going to be able to get possession of the wire.

The Witness: Yes, I had a conversation.

Q. (By Mr. Diether): Prior to July 27, when did he tell you? A. Well, about that time.

Q. What did he say?

A. It is hard to answer that because it was a matter of his providing the necessary documents for us to get the release from the steamship company to move his stuff and that is the only way I can explain the conversation.

Q. Did he say what documents you were going to get?

A. He didn't have to say. We knew what we needed and he knew we knew what we needed.

Q. How do you know when you were going to get them? A. I didn't know.

Q. Mr. Londono never gave you any information on that?

A. We merely knew that when the ship arrived as soon as the documents were transmitted through the necessary [1146] channels we would get them and when we received them we could go to work to move the freight.

Q. Mr. Londono never told you he would receive them from any particular person or party?

(Testimony of James E. Sweeney.)

A. No.

Q. Did you have any discussion with Mr. Londono relative to the fact that the quantity of wire that he had purchased had been reduced at any time prior to July 27? A. I don't remember.

Q. You have no recollection of any conversation in which he informed you that the quantity of wire he purchased had been reduced?

A. No direct recollection.

Q. Did Mr. Londono instruct you to take possession of the wire for him and arrange for reshipment to South America?

A. Well, the thing just developed—

Q. Just answer the question. Did he? Answer yes or no. A. No.

Mr. Bunn: I think he is trying to answer the question.

Q. (By Mr. Diether): Did you know where the wire was going to be made available?

A. Where or when?

Q. Where. A. Yes, I knew. [1147]

Q. When did he tell you that?

A. I determined that.

Q. How? A. By contacting Matson.

Q. Did you know when it would be available?

A. Approximately.

Q. Did you know that the shipment of barbed wire on the White Squall, of which Mr. Londono was going to get his 2000 tons, was in excess of that amount?

A. Yes, I knew by the time we were ready to take delivery.

(Testimony of James E. Sweeney.)

Q. When did you know that? What date?

A. Probably the 27th or 29th, I don't remember.

Q. Do you know that the shipment was for 2300 tons?

A. Yes.

Q. And that Mr. Londono was to get 2000 tons of it?

A. Yes.

Q. And you knew that on or about the 27th of July?

A. About the 29th.

Q. I have in my notes that you had some conversation with Mr. Londono on July 26th. Did you see him on that day?

A. I don't remember that I did.

Q. You don't remember any conversation with him at that time?

A. No. [1148]

Q. Did you have any discussion with Mr. Londono with respect to inspecting the wire on the dock before you took delivery?

A. No.

Q. Did anybody suggest that he wished to inspect the wire before you took delivery?

Mr. Bunn: Before what date?

Mr. Diether: At any time before he took delivery of the wire.

The Witness: No——

Mr. Bunn: I object to the question as uncertain, indefinite, in the light of the testimony that has already gone in here about dates upon which wire was removed from the dock on Mr. Londono's behalf. I think counsel should fix the date.

The Court: I think it is sufficient. He answered it and he said "No."

Q. (By Mr. Diether): Did you know prior to

(Testimony of James E. Sweeney.)

July 29th, 1946, that you were going to receive any documents from the Citizens Bank?

A. I may have. I don't remember.

Q. You remember no conversation with Mr. Londono with regard to any such documents?

A. Well, it is possible. I can't remember the exact conversation. I knew that he was going to handle it through [1149] the bank.

Q. Did Mr. Moran at any time call you on the telephone on July 29? A. No.

Q. Did you have any conversation with any officer of the bank on July 29?

A. None that I remember.

Q. Officer or employee? A. No. [1150]

* * *

Q. Prior to July 29, 1946, did Mr. Londono instruct you to segregate 2000 tons of the best 2300 tons of the shipment? A. No. [1152]

The Court: Did you ever know whether or not there were 2300 tons in the shipment?

Mr. Diether: He testified this morning he did, your Honor.

The Court: He said—your question was whether or not he had been advised that there were only 2000 tons—and his answer was that it was 2000 or 2300 or 2700, he didn't remember which.

Mr. Diether: I think he told me in part of my cross-examination that he knew there was 2000 tons of a 2300-ton shipment.

Q. Is that not correct?

A. That is my recollection.

(Testimony of James E. Sweeney.)

Q. And you knew that about July 27, I believe you said? A. Well——

Q. 27 or 28 I believe were the dates you used.

A. Someplace along in there, yes.

Q. Did Mr. Londono prior to July 29, 1946, instruct you to separate the galvanized and black wire?

The Court: Prior to July?

Mr. Diether: July 29, 1946.

The Witness: I believe he did. Not in specific words to my knowledge, but it was his intention to separate it for different consignees in [1153] Colombia.

Q. (By Mr. Diether): Did he tell you any particular quantity he wanted to separate?

A. No, but it was all tentative at the time.

Q. I believe you stated just before the noon recess that you had had no conversation with any officer or employee of the bank on July 29.

A. That is my recollection, that I did not.

Q. And that was both oral and written? Does that apply to oral or written?

A. No, oral only.

Q. I show you Plaintiff's Exhibit 7 for identification, which is a freight bill. Did you receive that document on July 29, 1946? A. Yes.

Q. And together with a letter? A. Yes.

Q. From whom?

A. From the Citizens Bank.

Q. Did you acknowledge receipt of the letter on a carbon copy of it? A. Yes.

(Testimony of James E. Sweeney.)

Q. And what did you do with the carbon copy of the letter on which you acknowledged receipt?

A. Returned it to the messenger that brought the original [1154] from the bank.

Q. On the carbon copy of that letter did you also acknowledge receipt of any documents?

A. Yes.

Q. What documents? A. This one.

Q. Did you know at the time that you acknowledged receipt of it that it was a freight bill?

A. I didn't take that into consideration.

Q. Did you look at the document?

A. I looked at it, yes.

Q. Did you realize it was a freight bill?

A. I realized it was a release I needed to order the freight out.

Q. Answer my question. Did you know at the time you acknowledged receipt of that document that it was a freight bill? A. Yes.

Q. Did you receive more than one letter from the Citizens Bank on July 29, 1946? A. No.

Q. You just received one letter? A. Yes.

Q. I show you defendant bank's Exhibit C-D. Is that the letter you received on July 29th? [1155]

A. No.

Q. I show you defendant bank's Exhibit C-D1—that is your signature at the bottom of that document, isn't it? A. Yes.

Q. Did you acknowledge receipt of that document on July 29, 1946? A. No.

(Testimony of James E. Sweeney.)

Q. When did you receive Defendants' Exhibit C-D? A. I don't know the date.

Q. Was it after July 29? A. Yes.

Q. How much after?

A. About two or three days.

Q. How did you receive it?

A. I don't remember.

Q. Do you remember signing Defendants' Exhibit C-D1?

A. I don't remember the day. I know I did.

Q. You have no recollection of when you did it?

A. Not the exact date.

Q. Or under the circumstances under which you acknowledged receipt of that letter?

A. I believe by messenger.

Q. You think it was sent to you by messenger?

A. I think so.

Q. Did you deliver the carbon copy of that letter to [1156] the messenger who delivered it to you?

A. Yes.

Q. Was the messenger from the Citizens Bank?

A. I assume he was.

Q. Were there any documents delivered with that letter, Defendants' Exhibit C-D?

A. That is the part that is not clear in my memory. It transmits bill of lading 29 but I believe——

Q. Just answer the question.

The Court: Let him answer the question.

The Witness: I believe that the transmitted document was already in our possession.

(Testimony of James E. Sweeney.)

Q. (By Mr. Diether): You mean the bill of lading? A. As it is called there.

Q. Bill of lading No. 29 was already in your possession? A. Not a bill of lading.

The Court: What was it?

The Witness: The freight bill.

Q. (By Mr. Diether): Did you read this letter before you acknowledged receipt of it?

A. Well, the instructions—yes, I read it.

Q. And yet you acknowledged receipt of a bill of lading [1157] and at that time you knew it was a freight bill? A. Yes.

Q. Is it your practice, or was it your practice to acknowledge receipt of documents which you didn't receive?

A. The practice, or in that particular case it was a matter of getting something to release the merchandise to go to work to deliver the merchandise to another ship.

Q. On July 29, when you received Plaintiff's Exhibit 7 for identification, was there any other document received by you except the original of the letter from the bank, together with a carbon copy and the freight bill? A. On the 29th, no.

Q. You didn't have any other little, small form of receipt? A. No, nothing.

Q. Did you ever notify the Citizens Bank that you had not received a bill of lading when you signed that letter after you signed that letter, Defendants' Exhibit C-D? A. No.

Q. On July 29, after you received that freight

(Testimony of James E. Sweeney.)

bill and the letter from the bank, what action did you take, if any, with respect to this transaction?

A. Well, phone up the Matson Line.

Q. Who did you talk to?

A. As I recall, Mr. Ford there, the freight agent at [1158] Wilmington.

Q. What time of the day was it that you called him?

A. I don't remember.

Q. Was it immediately after you received this letter?

A. Very shortly.

Q. What time of day did you receive that freight bill?

A. I don't know.

Q. You have no recollection whether that was in the morning or afternoon?

A. We will say the middle of the day.

Q. The middle of the day?

A. Yes.

Q. And you called Mr. Ford about the middle of the day?

A. Approximately.

Q. What conversation did you have with Mr. Ford?

A. That I had the necessary release to go ahead and take delivery of the merchandise, and I believe he had been in touch with Dulien Steel more or less confirming what I told him.

The Court: Did he say so? Or did he indicate that to you?

The Witness: Yes, he indicated that he knew that the merchandise had been sold to someone.

The Court: He knew what you were talking about then?

The Witness: Yes, he did. [1159]

(Testimony of James E. Sweeney.)

So it was that part that was taken care of, and I told him that we needed prompt delivery or to get the wire off the dock to make a sailing and would issue in writing delivery orders.

Mr. Hubert Morrow: A little louder, please.

Mr. Diether: What was the last part of the answer?

The Witness: That we would issue in writing delivery orders to a truck company that we would designate authorizing them to pick up the freight.

Q. (By Mr. Diether): Is that all the conversation? A. That was it.

The Court: Did you issue delivery orders in writing?

The Witness: Yes.

The Court: Are they in your file?

The Witness: Yes.

Q. (By Mr. Diether): Did you mention the fact that you were representing Mr. Londono in this transaction? A. Yes.

Q. And did you tell him what documents you had received?

A. I told him that I had the release on it.

Q. Is that the word you used?

A. That is the word. [1160]

Q. By "release" what did you refer to?

A. The paid receipted freight bill.

Q. Did you mention the fact that you had a paid receipted freight bill?

A. Not in those words, I don't think.

(Testimony of James E. Sweeney.)

Q. Did you mention to him the fact that it was Mr. Londono who had purchased 2000 tons of a 2300-ton shipment? A. No.

Q. Did you mention anything about the 2300-ton shipment? A. I don't recall.

Q. Did Mr. Ford agree to deliver the merchandise to you on your order?

A. Yes, with the agreement that we were to send the necessary orders to whatever transportation company we designated.

Q. Did you have any discussion with Mr. Londono after you talked to Mr. Ford?

Mr. Bunn: On the same day, you mean?

Mr. Diether: The same day; July 29th.

The Witness: I may have regarding the details of the shipment.

Q. (By Mr. Diether): Did he come in the office?

Mr. Bunn: I move to strike the answer as not responsive [1161] to the question. It is a question that could have been and should have been answered yes or no. The witness says I may have, which clearly is an indication that he doesn't know whether he did or not.

The Court: It will stand for his answer.

Q. (By Mr. Diether): Did Mr. Londono come into your office on July 29?

A. I don't remember that.

Q. At the time you talked to Mr. Ford, did you know that the shipment of the 2300 tons of wire was direct to Dulien Steel Products Company?

A. That is what the freight bill indicated.

(Testimony of James E. Sweeney.)

Q. You knew that then as soon as you received the freight bill?

The Court: That is argumentative, counsel.

Q. (By Mr. Diether): When did you know that the bank had paid the purchase price for this wire?

The Court: You mean when did he first know?

Mr. Diether: When did he first know?

The Witness: I didn't know the exact date because it was an assumption. I had the release and it was up to me to assume that the bank had paid, which would be the 29th.

Q. (By Mr. Diether): So you assumed on the 29th when you received this [1162] freight bill, that the purchase price had been paid? A. Yes.

Q. Did you have any discussion with Dulien or any representative of Dulien on July 29?

A. No.

Q. When did you issue orders to the trucking company to pick up this wire that belonged to Mr. Londono?

The Court: First?

Mr. Diether: First.

The Witness: July 29.

The Court: What trucking company?

The Witness: M & M Transfer Company.

The Court: Is it in your file, the written order?

The Witness: Yes. It is that erroneously written one. In other words, for a wrong amount because——

The Court: You mean the erroneously written bill of lading?

(Testimony of James E. Sweeney.)

The Witness: Yes, and similar delivery order.

Mr. Hubert Morrow: Exhibit 44 for identification, I think.

The Court: Would your instructions be in that supporting documents file, No. 39?

Mr. Diether: 40-4.

The Court: 40-4, but your instructions to M & M Transfer Company, they would be in your supporting documents? [1163]

The Witness: Yes, that is right.

The Court: Which was Exhibit 39, I think.

Mr. Diether: Mr. John Morrow has just handed me from his file the original of a delivery order from Mattoon & Company to Matson Navigation Company, and it is the original of the document in question.

The Court: We will have it marked in just a moment, after the clerk finds the first part of Exhibit 39. Did somebody borrow it?

The Witness: I think it is on his left over there, on the edge of his desk.

The Court: We are looking for the first part of Exhibit 39. Here it is.

(The exhibits referred to were passed to the Court.)

The Court: Now his question related to orders, shipping orders, to M & M Transfer Company. You said they were in the supporting documents of Exhibit 39.

The Witness: I misunderstood you. It is in the

(Testimony of James E. Sweeney.)

supporting documents of each shipment. In other words, we issued a delivery order to start the shipment rolling and everything else comes behind it.

The Court: That was in what you described this morning as the erroneous bill of lading?

The Witness: Yes.

Mr. Hubert Morrow: Erroneous bill of [1164] lading?

The Court: I have forgotten the exhibit number, but the witness testified——

Mr. Dasteel: It is No. 44.

Mr. Hubert Morrow: Your Honor said erroneous bill of lading.

The Court: It was an erroneous proposed bill of lading.

Mr. Bunn: On a shipment to South America. That is the one your Honor is referring to, is it not?

The Court: The witness testified this morning and he identified some documents and he said they were erroneous, they were a proposed bill of lading but they were never issued.

Mr. Hubert Morrow: Yes.

The Witness: Mr. Diether has them.

The Court: What is the number?

Mr. Diether: 40-4.

The Court: That is all we wanted to know.

Q. (By Mr. Diether): Now the document which I just stated I received from Mr. John Morrow is the original of one of the documents which has been marked Exhibit 40-4——

(Testimony of James E. Sweeney.)

The Court: You mean it appears to be the original?

Mr. Diether: It appears to be.

The Court: There is no evidence to that effect yet.

Mr. Diether: That is right. [1165]

Q. I show you the defendant bank's Exhibit C-U. Is that the delivery order you stated that you sent to Matson on July 29, 1946?

A. Yes, that is the one I recall seeing on the 29th.

Q. Is that the original of the copy which is attached to Exhibit 40-4? A. Yes.

The Court: Let us mark 40-4 and give it a designation now so that we will not get confused. Let me see your C-U.

(The exhibit referred to was passed to the Court.)

The Court: Exhibit C-U is the original of the first document on 40-4, which will be marked 40-4-A.

Mr. Hubert Morrow: I don't understand the Clerk's C-U.

The Court: "C" is for Citizens Bank, and "U" is for the bank's Exhibit U.

Mr. Hubert Morrow: I understand that.

The Court: For identification.

Mr. Hubert Morrow: For identification?

The Court: Yes.

(The document referred to was marked Plaintiff's Exhibit No. 40-4-A for identification.)

(Testimony of James E. Sweeney.)

The Court: The witness has just testified that C-U for identification is the original of 40-4-A for identification.

Mr. Diether: You will stipulate, will you, Mr. John Morrow, that this was received by Matson, this document [1166] C-U, on or about July 29, 1946?

Mr. John Morrow: It is undated. I can't stipulate to that. I will stipulate only that I requested the document, or you subpoenaed it, I believe, and it was delivered to me shortly before the trial of the case, and I presented it. That is the only thing I know about it.

The Court: Just a moment. If I understand correctly, your stipulation is that it was produced to Mr. Morrow by the Matson Navigation Company as part of its files shortly before the trial in response to a subpoena?

Mr. John Morrow: Yes, it was.

The Court: That was your stipulation?

Mr. John Morrow: Yes.

The Court: But you do not stipulate to the date of receipt or anything else?

Mr. John Morrow: No, I don't, because I don't know, and it is undated, your Honor.

The Court: All you know is that they gave it to you as part of their files?

Mr. John Morrow: That is right.

Q. (By Mr. Diether): Mr. Sweeney, on the bottom of defendant bank's Exhibit C-U there appears this in typewriting, "2825 rolls of barbed wire ex White Squall," and then a "B" slash "L," LA 29

(Testimony of James E. Sweeney.)

attached. Does that "B" slash "L," LA 29 refer to bill [1167] of lading, LA-29? [1168]

* * *

The Witness: That refers to bill of lading, LA-29.

Q. (By Mr. Diether): Was bill of lading LA-29 attached to that document? A. No.

Q. How do you know that it was not?

The Court: That is argumentative, counsel.

The Witness: I can answer it.

Q. (By Mr. Diether): Yes. Why do you say it was not attached?

A. Well, I couldn't have had the bill of lading because the paid receipted freight bill was in existence then and which signified the original bill of lading had been surrendered to Matson.

Q. Where does it show on the freight bill that the original bill of lading had been surrendered to Matson? A. The paid receipted stamp.

The Court: You mean that is the custom in the trade?

The Witness: That is the practice and custom.

Q. (By Mr. Diether): In other words, just because the "paid" portion is on the freight bill, is that the reason? A. Yes.

Q. I show you defendant bank's Exhibit C-N for identification. I call your attention to the fact that there is a marked "paid" Matson stamp on that exhibit. [1169]

A. The explanation for that is that you don't

(Testimony of James E. Sweeney.)

see an initial on this paid receipted stamp on the bill of lading, and you do see it on the freight bill, which means——

Q. Just a moment.

Mr. Bunn: Let him finish his answer.

The Court: Go ahead.

The Witness: Well, the explanation for it is that anyone by accident or otherwise could walk into Matson's office and put the freight stamp on, but if they initial it it wouldn't be an authorized initialing and you will find that in all those freight bills throughout all those files, initialing by an authorized [1170] signature.

* * *

The Court: Let me see if I understand. Your testimony, in substance, is that it is the custom in the trade that when somebody presents you in your business a paid receipted freight bill initialed, that is, other than just a rubber stamp, that the assumption is that the bill of lading has been surrendered and the freight has been paid in order to receive the freight bill?

The Witness: Yes.

The Court: Very well.

Q. (By Mr. Diether): Isn't it true, Mr. Sweeney, that you could have received the original freight bill, which is defendants' Exhibit C-N on July 29, and have attached it to defendant bank's Exhibit C-U?

A. You mean received this and attached it to this?

(Testimony of James E. Sweeney.)

Q. Correct. A. No. [1171]

* * *

Q. Isn't it possible that you received the original bill of lading, which is Defendants' Exhibit C-N, and have [1172] attached it to Defendants' Exhibit C-U in transmitting it to Matson Navigation Company on July 29? A. No.

Q. Why did you put the fact that it was attached then on C-U? A. That is an office error.

Q. When did you realize it was an office error?

A. I didn't know the error was on there until this file was brought out some time ago.

Q. You never realized it until how long ago?

A. I can't say.

Q. That is the first time?

The Court: When you say "how long ago" and "you can't say," you mean since the litigation started?

The Witness: Yes.

Q. (By Mr. Diether): Do you have any present recollection, Mr. Sweeney, that there was no document attached to Defendants' Exhibit C-U?

A. I would say there was no document attached.

Q. You have a present recollection that there was not? A. Yes.

The Court: He just answered that.

Mr. Diether: Very well.

The Court: While we are on that subject, do you recall [1173] the date that Exhibit 40-4, what are designated blank but unexecuted bills of lading, do you recall the date they were made out?

(Testimony of James E. Sweeney.)

The Witness: It would be——

The Court: Incidentally, we will give these a number, Mr. Clerk. We have given the first document No. 40-4-A, and these attached to that will be 40-4-B—are these carbons?

The Witness: This is a master.

The Court: Very well. And 40-4-C.

(The documents referred to were marked Plaintiff's Exhibits Nos. 40-4-B and 40-4-C for identification.)

The Court: And here is another one. That will be 40-4-D.

(The document referred to was marked Plaintiff's Exhibit No. 40-4-D for identification.)

The Court: Do you recall the date they were made out? This 40-4-D seems to be different.

The Witness: Somebody used it——

The Court: For a form?

The Witness: ——for a sort of roughing up for another shipment. It looks like they pulled it out for that last one. The date I would say would be about July 30 or July 31.

The Court: That 40-4-B and C and D, which appears to be the original—or is it?

The Witness: Yes. [1174]

The Court: No, it is not. I don't know. There are a lot of things on it that are not on the other.

The Witness: I can explain. There is what is known as ditto carbon——

(Testimony of James E. Sweeney.)

Mr. Bunn: Louder, please.

The Witness: There is the original and the ditto carbon is placed over this so it can be run off on a gelatin roll and we can get about 20 or 30 copies.

The Court: I see.

Mr. Hubert Morrow: Your Honor, I am not up there. What is that document, 40-4-B?

The Court: 40-4 was the document identified this morning as proposed bills of lading that were unexecuted which the witness testified while identifying the documents that they were never executed and therefor never used. And attached to it is this what is now 40-4-A, an order to Matson Navigation Company, which is the defendant bank's Exhibit C-U.

Mr. Diether: Yes. We will offer that at this time as defendant bank's Exhibit next in order.

The Court: Admitted. That will be C-U in evidence.

(The document previously marked Defendant's Exhibit C-U was received in evidence.)

Q. (By Mr. Diether): Was it first contemplated that you would ship the [1175] 2825 rolls of wire to South America?

A. That would be the first shipment.

Q. Later——

The Court: I wonder if I might interrupt you, counsel, while we are on this.

I understood the witness to testify this morning that these documents relating to 40-4 were incorrect.

The Witness: Yes.

(Testimony of James E. Sweeney.)

The Court: And that you had issued a release order as well as these proposed bills of lading but they were incorrect. What was wrong? What happened?

The Witness: What happened was that when Mr. Londono went over to the Moore-McCormack Dock on the first delivery, which would be July 31st to Moore-McCormack, and discovered that the merchandise wasn't what he wanted, it was then that he stopped the shipment so we had to revise all the papers.

Q. (By Mr. Diether): When you eventually shipped, you shipped more than you originally first contemplated?

A. Whatever the figures were, yes.

The Court: Let me see if I understand you correctly. In sequence, you issued this release order, those proposed bills of lading, went to the dock with Mr. Londono, he saw the wire and said, "Don't ship it to Colombia," came back to your office the next day, August 1st, and dictated the letter [1176] which has been identified here to Dulien?

The Witness: Yes.

The Court: Did you thereafter write a letter to M & M Transfer Company?

The Witness: We reissued the instructions.

The Court: On what date, do you remember?

The Witness: When we resumed taking delivery. I don't know the date.

The Court: If I understand you correctly, you did not attach to this document, C-U, of which

(Testimony of James E. Sweeney.)

40-4-A is a carbon, the original bill of lading, LA-29, or any bill of lading.

The Witness: No.

The Court: Or any other document?

The Witness: No.

The Court: Very well.

Q. (By Mr. Diether): You mentioned the fact that you had made out delivery orders on July 29, 1946, to M & M Transfer. Can you point out in Mattoon's file where those could be found?

A. You have it.

Q. This is to Matson?

A. It authorizes M & M to pick it up.

Q. You didn't write direct then to M & M Transfer?

A. No, we called them.

Q. In other words, your instructions to M & M Transfer [1177] were verbal?

A. On the first shipment, yes.

Q. On July 30, which was Tuesday, did you see Mr. Londono?

A. I don't remember.

Q. You talked to him on the telephone?

A. I don't remember that.

Q. Did you talk to anyone in the bank?

A. Yes.

Q. Who?

A. Mr. Powers and Mr. Schroeder.

Q. Did you talk to both of them.

A. Both.

Q. What time of day did they call you?

A. My recollection is that it was the afternoon.

Q. Who did you talk to first?

(Testimony of James E. Sweeney.)

A. Mr. Powers.

Q. What did he say?

The Court: Powers called you?

The Witness: Yes.

He stated that the bank wanted to reissue the instructions they had issued to us the day before.

Q. (By Mr. Diether): Reissue the instructions?

A. Yes. And could we get the original letter and the [1178] document transmitted with it back to the bank as soon as possible.

And as I explained the other day, either on the same phone call or a later one, Mr. Schroeder also talked to me regarding it and said that in order to cover the bank's position better they did want to reissue the instructions.

The Court: Did you ask him why?

The Witness: No.

Q. (By Mr. Diether): Was there any mention made of any document?

A. Well, merely that they wanted to get the original letter and the document transmitted back.

Q. Did he mention what the document was?

A. I don't recall what it was called over the phone.

The Court: Had you before that time issued C-U, that delivery order, before you got this call?

The Witness: Yes.

The Court: Before the call from Powers?

The Witness: Yes.

The Court: You had issued that?

The Witness: Yes.

(Testimony of James E. Sweeney.)

Q. (By Mr. Diether): And was any mention made of a bill of lading?

A. I don't recall specifically. It was to bring the letter and the bill of lading or freight bill, as it now is, [1179] back to the bank.

Q. Did you tell him at that time that you didn't receive a bill of lading? A. No.

Q. Was any mention made on your part that you had not received a bill of lading? A. No.

Q. Was that all the conversation you had on the 30th with Mr. Powers?

A. That was all. They wanted it back in a hurry and it was impossible for me to get it back that day. I said I would come in in the morning, and I did, the following morning, the 31st.

Q. Was there any discussion with regard to why they wanted to get the document back for endorsement?

A. No. "Endorsement" wasn't mentioned then.

Q. It wasn't mentioned at all? A. No.

Q. At that time had you received a letter from Dulien—

Mr. Clerk, let me see Exhibit 41.

(The document referred to was passed to counsel.)

Q. (By Mr. Diether): Had you received Plaintiff's Exhibit 41 at that time? [1180]

A. (Examining document.)

Q. That is on July 30th, at the time you talked to Mr. Powers and Mr. Schroeder.

(Testimony of James E. Sweeney.)

A. I don't remember whether I received it on the 30th or the 31st. It is dated the 29th. If it was mailed we could assume we had it on the 30th.

Mr. Bunn: I move to strike beginning with, "It is dated the 29th," because he proceeds to give a conclusion and it is not responsive to the question.

The Court: It may be stricken.

Q. (By Mr. Diether): Did you mention that fact to Mr. Schroeder, that you had that letter?

A. No.

Q. Or to Mr. Powers? A. No.

The Court: You are speaking now of the letter of July 29th?

Mr. Diether: July 29th from Dulien to Mattoon.

The Court: Very well. I remember it.

Q. (By Mr. Diether): Did you talk to anyone from the Matson Navigation Company on the 30th?

A. Not that I recall.

Q. Did you talk to anyone from Dulien's [1181] office? A. No.

Q. Did you go to the dock on the 30th?

A. No.

Q. Were you present when the wire was taken from the dock by M & M Transfer?

Mr. Bunn: What wire? I object to the question as indefinite.

Mr. Diether: The first wire for Mr. Londono.

Mr. Bunn: I still object to the question as uncertain and indefinite.

The Court: Objection sustained.

(Testimony of James E. Sweeney.)

Were you present when any wire was taken by M & M Transfer pursuant to an order written by you?

The Witness: Yes.

Q. (By Mr. Diether): Were you there when the first wire was taken? A. Yes, part of it.

Q. When was that?

A. That would be the 31st.

Q. Were you there prior to the time any wire had been taken from the dock by M & M Transfer?

A. Yes.

Q. What time of the day was that?

The Court: What time of what day?

Mr. Diether: July 31st he said he was there.

Mr. Bunn: He didn't say it in answer to that question.

The Court: No, you asked him if he was there prior to that time. He may have been there 15 years ago.

Mr. Diether: I misunderstood him, then.

Q. Did you say that you were there when the first wire was taken, and that was July 31st, or was it prior to July 31st?

The Court: He testified that he was there when the first wire was taken by M. & M. Transfer Company pursuant to orders from Mattoon & Company. Your next question was whether he was there prior to that date. You mean on the same day?

Mr. Diether: No, I want to know what day it was that he was there.

The Court: He said July 31st.

(Testimony of James E. Sweeney.)

The Witness: That was the day that M. & M. was removing the wire.

The Court: And you were there?

The Witness: Yes.

Q. (By Mr. Diether): At what time of day was it? A. Afternoon, about 3:00 o'clock.

Q. That was after you had left Dulien's office?

A. Yes.

Q. And no wire at that time had been moved from Pier A to Moore-McCormack dock up to that time? [1183]

A. Oh, yes, they had been working on it all day, the 31st.

Q. That is what I want to know. But you weren't there until the end of the 31st. In other words, some wire had moved prior to the time you arrived there at 3:00 o'clock in the afternoon of July 31st? A. Right.

Q. Had any documents been presented to Matson Navigation Company to permit the removal of that wire other than that delivery order which you previously identified?

Mr. Bunn: By whom?

Mr. John Morrow: I object to the question as indefinite. Anything presented to someone else it is presumed that he wouldn't know about it.

The Court: Objection sustained.

Q. (By Mr. Diether): Did you deliver to Matson Navigation Company any other document other

(Testimony of James E. Sweeney.)

than the delivery order, which is Defendant's Exhibit C-U? A. No.

Q. Or to Transmarine?

The Court: At any time?

The Witness: No, at no time.

Q. (By Mr. Diether): You met Mr. Londono on the morning of July 31, [1184] 1946, did you not?

A. He came to Mattoon's office.

Q. What time of day was that?

A. In the morning, around 10:00, 10:30.

Q. Did you show him any documents that you had received from the bank?

A. He knew that I had received these——

The Court: No, did you show him any?

The Witness: Specifically, no.

Q. (By Mr. Diether): Did you discuss with him any document that you had received?

A. Yes.

Q. What documents did you tell him you had received?

A. The letter and the freight bill that was to be returned.

Q. Did you tell him it was a freight bill?

A. I didn't point it out to him.

Q. Did you show it to him?

A. I don't remember whether he saw it then or not.

Q. Did you show him the letter?

A. I don't remember that either.

Q. Did he ask to see the documents that you had received?

(Testimony of James E. Sweeney.)

A. I don't remember that he asked to [1185] see it.

Q. Did you tell him the discussion that you had had with Mr. Powers and Mr. Schroeder?

A. Yes, I told him, and told him why we were returning it.

The Court: What did you say as to why you were returning it?

The Witness: That the bank wanted to reissue the instructions in order to give themselves more protection.

Q. (By Mr. Diether): Did you say what protection? A. No.

Q. Did you hand the documents then to him to take to the bank? A. No.

Q. Did you have possession of them when you left Mattoon's office? A. Yes.

Q. Did you advise him that you had already given instructions to pick up the wire on Pier A?

A. He knew it. I don't know that I advised him then.

Q. But you knew it at that time?

A. I am sure he did.

Q. Did you advise him at that time that you had any space reservations for shipment of the wire to South America?

A. He knew that too at the time. [1186]

Q. At that time? A. Yes.

Q. Did he give any instructions at that time in addition to those that he had already given you?

A. No.

(Testimony of James E. Sweeney.)

Q. Anything said about picking out the best 2000 tons of the 2300-ton shipment? A. No.

Q. Anything about rejecting any wire for excessive weathering? A. No.

Q. Anything about separating out the galvanized and the black?

A. Not that I remember.

Q. Have you told us all the discussion you had with Mr. Londono at your office?

Mr. Bunn: Prior to going to the bank?

Mr. Diether: Prior to going to the bank.

The Witness: There was very little discussion. He came in at that time and it was necessary to get to the bank promptly, and we talked very little about it. It was just a brief mention of what we had to do when we went to the bank.

Q. (By Mr. Diether): Did you know at the time that you were at your office with Mr. Londono that you were going to the Harbor that [1187] day?

The Court: You mean in the morning before he went to the bank did he know he was going to the Harbor?

Mr. Diether: Yes.

Q. Was it your plan, had you prearranged that with Mr. Londono?

A. No, it was not prearranged.

Q. When did you decide to go to the Harbor?

A. When it became necessary to go to Dulien Steel for that endorsement.

Q. That was the time when you decided to go to the Harbor? A. Yes.

(Testimony of James E. Sweeney.)

Q. What time did you arrive at the bank with Mr. Londono? A. About 11 o'clock.

Q. Who did you first see?

A. Mr. Schroeder and Mr. Powers.

Q. Where did you see Mr. Schroeder first?

A. In the foreign department.

Q. What place in the foreign department?

A. In his office.

Q. Was he sitting at the desk or at the counter?

A. I don't remember.

Q. What was first said between you and Mr. Londono and [1188] Mr. Schroeder?

A. Well, my recollection is that we merely went in, said "Good morning, here are the papers."

Q. What papers did you say?

A. The papers that you phoned for. We could put it that way.

Q. Were they open or in an envelope or how did you present them?

A. They were carried in my pocket and handed to either Mr. Schroeder or Mr. Powers. I don't recall.

Q. What did Mr. Schroeder say?

A. He accepted them and——

The Court: Did he say "Good morning"?

The Witness: I assume he did.

He accepted them and issued some instructions to Mr. Powers to which I didn't pay any attention.

Q. (By Mr. Diether): Was there any discussion between Mr. Londono and Mr. Schroeder about these documents? A. None that I remember.

(Testimony of James E. Sweeney.)

Q. Was there any discussion between you and Mr. Londono about these documents in Mr. Schroeder's presence?

A. No. [1189]

* * *

Q. Did Mr. Schroeder say what additional instructions he wished to give you at the time you returned the letter and the freight bill?

A. He mentioned the insurance coverage for the time that the freight was on the dock and until it was loaded out on a ship.

Q. Was that the only thing he said?

A. That was the main portion of what he mentioned to me.

Q. Did he give you any new instructions then?

A. Written or verbal?

Q. Either one.

A. Well, Mr. Powers set about to re-issue that letter of the 29th. [1190]

Q. He did what? I didn't hear what you said.

A. I say Mr. Powers, as far as I know, set about to re-issue the instructions of the 29th.

Q. You mean the letter of July 29th?

A. Yes.

Q. Did he tell you that? What did he say?

A. He didn't tell me.

Q. How did you know that?

A. I assumed it.

The Court: Did you see him doing something?

The Witness: No, I didn't. I saw him listen to

(Testimony of James E. Sweeney.)

Mr. Schroeder and take the letter, and I don't remember whether he took the release or not.

Q. (By Mr. Diether): What do you mean the release, the freight bill?

A. Yes, into another part of the foreign department.

The Court: Then he came back with another letter?

The Witness: Well, he didn't while we were there.

The Court: But you later saw one?

The Witness: Yes.

Q. (By Mr. Diether): You don't know whether the freight bill ever left your hands?

A. It did in the bank.

Q. Did you give it to Mr. Powers or Mr. Schroeder? [1191]

A. Well, Mr. Schroeder I believe had it most of the time because when we went downstairs to the note department and spent time there with further letters and arrangements and the conclusion of that was the presentation of that letter of the 31st instructing us how to consign the barbed wire.

Q. Did you have any more discussion with Mr. Powers or Mr. Schroeder up in the foreign department? A. No.

Q. Nothing else?

A. Nothing that I remember.

Q. I show you Defendants' Exhibit C-F, which is a letter from the bank to Mr. Londono——

The Court: For identification?

(Testimony of James E. Sweeney.)

Mr. Diether: It is in evidence.

Q. —and ask you if that is what was presented to Mr. Londono in your presence.

A. If it was, I didn't see the letter.

Q. Did you hear any discussion about it?

A. Yes.

Q. What discussion took place?

A. The only discussion I can remember is that they were making the arrangements for this loan and it was of no interest to me so I didn't listen.

Q. Did you have any discussion with Mr. Londono about [1192] whether you had received any of the documents which are referred to in that letter?

The Court: Let me hear that question again.

(The question referred to was read by the reporter as follows: "Q. Did you have any discussion with Mr. Londono about whether you had received any of the documents which is referred to in that letter?")

The Court: You mean whether or not Mattoon and Company had received any?

Mr. Diether: That is correct.

The Witness: No.

Q. (By Mr. Diether): Did you see Mr. Londono sign that letter?

A. Not that I remember.

The Court: Let me see it.

(The document referred to was passed to the Court.)

(Testimony of James E. Sweeney.)

Q. (By Mr. Diether): Whereabouts did you see that letter? Was it in the foreign department or after you got down to the note department?

A. This is the first time I have seen it.

Q. You never saw it before? A. No.

Q. Or did you ever see the original of it? [1193]

A. No.

Q. You did not see the freight bill again until you got down to the note department, is that correct? A. Yes, that is right.

Q. Who handed it to you there?

A. Mr. Schroeder.

Q. What did he say?

A. He wanted me to sign the letter receipting for those instructions regarding the consigning of the barbed wire and handed the freight bill, instructing me to get it endorsed by Dulien Steel.

Q. What did he say about getting the endorsement by Dulien Steel?

A. Well, they were verbal instructions.

Q. Did he hand you the document?

Mr. Bunn: Let him testify as to what Mr. Schroeder said.

Q. (By Mr. Diether): All right. Tell us what he said.

A. I don't remember his exact words. It was merely to get the endorsement which came out in what is now on the back of the freight bill.

Q. Did he hand you the document and say, "Get this endorsed"?

A. Yes, in that way I assume. [1194]

(Testimony of James E. Sweeney.)

Q. He handed you the freight bill?

A. Yes.

Q. And said, "Get an endorsement on"—did he call it a bill of lading?

A. I don't remember what he called it.

Q. Did you tell him it was not a bill of lading?

A. No.

Q. Was there any reference to the fact that it was a freight bill?

A. There was no reference to what kind of a document it was other than the release document.

Q. Did he tell you what kind of an endorsement he wanted you to get?

A. In substance what now appears on the back of it. I don't remember the words.

Q. Was that before or after he had handed you these new instructions?

A. We will say at the same time.

The Court: It was on July 31st?

The Witness: Yes.

Q. (By Mr. Diether): And the instructions you refer to are Plaintiff's Exhibit 11?

A. (Examining document.)

Mr. Bunn: Is that the letter dated July [1195] 31?

Mr. Diether: I should say that is the letter from Mr. Londono to the bank.

The Witness: This letter doesn't mean anything.

Q. (By Mr. Diether): Did you see that letter before it was signed by Mr. Londono?

(Testimony of James E. Sweeney.)

The Court: That letter?

Mr. Diether: Which is Plaintiff's Exhibit 11.

The Witness: No.

Q. (By Mr. Diether): When did you first see it? A. No.

Q. You had never seen it before?

A. No.

Q. Are the instructions you refer to then Plaintiff's Exhibit 16-A? A. Yes.

Q. When that document, Plaintiff's Exhibit 16-A, was handed to you, he also handed to you the freight bill? A. That is right.

Q. And that was down in the note department?

A. Yes, sir.

Q. And at the same time you acknowledged receipt of the original of Defendants' Exhibit C-E on defendant Bank's Exhibit C-E-1? [1196]

The Court: C-E, what is that?

Mr. Diether: C-E-1 is the letter from the bank to Mattoon of July 31.

Mr. Bunn: Bearing that date?

Mr. Diether: That is right.

The Witness: Yes, I acknowledged receipt.

Q. (By Mr. Diether): And the original was handed to you right in the bank? A. Yes, sir.

Q. And you gave this carbon copy to Mr. Schroeder at that time? A. Yes.

Q. Were any additional documents handed to you by the bank at that time? A. That is all.

Q. Was Mr. Londono within hearing of Mr.

(Testimony of James E. Sweeney.)

Schroeder's instructions to you with respect to getting an endorsement on the freight bill?

A. Yes.

Q. Did Mr. Londono see the document?

A. Yes.

The Court: Which document?

Mr. Diether: Plaintiff's Exhibit 7, which is the freight bill. [1197]

The Witness: Yes.

Q. (By Mr. Diether): Did you have any discussion about it?

A. None other than the endorsement.

Q. Who took Plaintiff's Exhibit 7, which is the freight bill, from Mr. Schroeder?

A. Either myself or Mr. Londono. We were going together. It was my responsibility. I signed for it.

Q. You signed for the freight bill?

A. Yes.

Q. Where did you sign for the freight bill?

A. In the note department.

Q. Where did you sign in the note department for the freight bill?

A. I just got through explaining the steps in the receipt of it, and that was where we were instructed to have the endorsement on the back of it. That is what I have been talking about all the time.

Q. You said you acknowledged receipt of the freight bill in the foreign department on what document?

(Testimony of James E. Sweeney.)

The Court: He said in the note department.

Mr. Diether: That is right, in the note department.

Q. What document did you acknowledge receipt of the freight bill?

A. It was that letter of the 31st. [1198]

Q. This one?

A. Well, not a receipt. It is with further reference and it was handed back but it wasn't transmitted on this one.

Q. You are referring to the paragraph which reads, "With further reference to our letter of July 29 enclosing Matson Navigation Company's bill of lading LA-29 covering 4,599,948 pounds of barbed wire. We hereby request that from the above lot you segregate 2,000 tons of the best quality and the balance"——

The Court: We have all read the letter a dozen times, counsel. Let us proceed.

The Witness: Maybe I shouldn't have said acknowledged receipt of. It was turned over with instructions to get the endorsement, which were verbal. So inasmuch as the bank had placed Mattoon in the position of being responsible for the return of the original shipping documents, we were also responsible for that freight bill and obtaining the endorsement. As to who took it, Mr. Londono or myself, I don't remember.

Q. (By Mr. Diether): With reference to this first paragraph, it refers to "our letter," the bank's

(Testimony of James E. Sweeney.)

letter, of July 29th. Did you have a letter from the bank of July 29th at that time?

A. Not at that time, no. [1199]

Q. You did not? A. No.

Q. Yet you acknowledged receipt of this letter.

The letter instructs you to pick out the best 2,000 tons of the 2300-ton shipment. Is that the first instructions you had received to segregate the best 2,000 tons of the 2300-ton shipment?

A. Yes.

Q. Did you give any new or different instructions to Matson Navigation Company or to M. & M. Transfer after you received those instructions from the bank?

A. Well, the trip to the Harbor took care of that. That was when it was discovered that it wasn't what it was supposed to be.

Q. Did you ever give any instructions to Matson or to Transmarine or M. & M. Transfer with respect to picking out the best 2,000 tons of the 2300 ton shipment? A. No.

The Court: Did you ever make a request to Matson to be permitted to pick out the best 2,000 tons of any 2300 ton shipment, or make a request to select the wire of any kind?

The Witness: It wasn't necessary.

The Court: Did you?

The Witness: No.

Q. (By Mr. Diether): Did you at any time receive any [1200] instructions from Mr. Londono

(Testimony of James E. Sweeney.)

to reject any of the wire for excessive weathering?

A. No.

Q. Have you given us now all the conversation that you had at the bank on July 31 when Mr. Londono and yourself were there?

A. All that I can remember.

Q. Did you talk to any other officers of the bank on July 31 by telephone after you had gone down to Dulien? A. No.

Q. Or after you had returned from the Harbor that day? A. No.

Q. What time did you arrive at Dulien's office?
The Court: When?

Mr. Diether: On July 31st.

The Witness: Oh, approximately 1:30, 2:00 o'clock.

Q. (By Mr. Diether): Who did you see first?

A. Mr. Grinstein.

Q. What conversation took place?

A. Well, the conversation that took place was initially the endorsement on the back of the freight bill.

Q. What did you say and what did he say?

A. I don't remember. [1201]

Q. Did you say this was a freight bill, we want it endorsed?

A. I wasn't the first one to talk.

Q. Who talked first?

A. There were three of us and I don't remember who talked first. There was the usual salutations and we stated our business, and I don't recall

(Testimony of James E. Sweeney.)

which one of the three of us, Mr. Rendon, Mr. Londono, or myself brought up the matter.

Q. You have no recollection of what was said?

A. It was merely—whoever made the statement—was to have the endorsement put on the back of the freight bill, and that was immediately complied with, and we had the wording so set up in our minds at that time so that it met with the approval of all.

Q. Did you tell Mr. Grinstein that you were handing him the freight bill and you wanted an endorsement on it?

A. I don't remember the words we used on that document.

Q. Did you tell that to Mr. Stanley?

A. Tell what, that it was a bill of lading?

Q. That it was a freight bill you wanted endorsed?

A. No, I don't remember the words we used on it.

Q. Did you look at the endorsement after it was put on the back? [1202] A. Yes.

Q. Did you observe that it said bill of lading?

A. I didn't notice.

Q. You didn't read it?

A. I noticed in substance it had the necessary wording that we needed or that the bank had instructed us to get. It was signed by Mr. Stanley, I saw Mr. Stanley sign it, and that was it.

Q. Did you tell anybody that it wasn't a bill of lading when you were there? A. No.

(Testimony of James E. Sweeney.)

Q. Who took it after it was signed by Mr. Stanley?

A. I picked it up from him. I don't know whether I carried it back to Los Angeles or whether Mr. Londono did.

Q. Then what happened to it after you got back to Los Angeles?

A. Then it reposed in Mattoon's file.

Q. How long did it remain there?

A. Perhaps two or three weeks.

Q. Do you know when it was removed?

A. I don't know the day, but I remember that Mr. Londono had it.

Q. Did you take it out and give it to him?

A. I don't remember whether I took it out or whether he did. [1203]

Q. Did you have any discussion about it at any time?

A. The discussion that I recall, he came to me one day, morning or afternoon I don't remember, and showed me the document and he said, "Is this a bill of lading," and I said, "No."

Q. What did you say? A. I said, "No."

Q. What did he say?

A. He apparently had been discussing the matter with Mr. Bunn because he departed with the document then.

Q. That is the last that it was ever in Mattoon and Company's file? A. That is right.

Q. You haven't seen it since that time until you came here in Court?

(Testimony of James E. Sweeney.)

A. I believe I saw it in Mr. Bunn's office once or twice.

Q. You went on down to the harbor then immediately after you left Dulien's office, didn't you?

A. Yes.

Q. And how much wire had been removed from the boat at that time?

A. From the ship?

Q. From the ship. [1204]

A. I can't tell you.

Q. Did you have the freight bill and the turnover letter with you when you went to the dock on Pier A on July 31st?

Mr. Bunn: What does counsel refer to by the "turnover letter"?

Mr. Diether: The letter from Dulien to Mattoon and Company dated July 29.

Mr. Bunn: The letter from who?

Mr. Diether: Dulien to Mattoon and Company dated July 29.

The Court: Did you have that letter with you on July 31st?

The Witness: No.

Q. (By Mr. Diether): You didn't have it?

A. No.

Q. You didn't have that letter with you at all?

A. No.

Q. Did you exhibit the freight bill to anyone on the dock?

A. I don't remember that I did.

The Court: Did you have a conversation at the

(Testimony of James E. Sweeney.)

dock on that day with Mr. Londono concerning the wire, the quality of it? [1205]

The Witness: The afternoon of the 31st, yes.

The Court: What did he say to you?

The Witness: Well, more and more was being discharged and obviously the quality wasn't good.

The Court: No, what did he say to you? Just what did he say to you?

The Witness: In substance, he didn't like the looks of the percentage of the bad wire.

The Court: Did he say anything to you about shipping the wire?

The Witness: Well, no.

The Court: He did not order you not to ship it?

The Witness: No, not until we got to Moore-McCormack which was in another part of the harbor.

The Court: What did he say then?

The Witness: Don't ship any.

The Court: Don't ship any wire?

The Witness: That is right.

The Court: What else?

The Witness: Well, we arranged to send——

The Court: Did he say anything as to why not to?

The Witness: The quality was bad.

The Court: Is that what he said?

The Witness: Yes, he said the quality isn't good and he wouldn't ship it to his customers in Colombia in that [1206] condition.

(Testimony of James E. Sweeney.)

The Court: By the way, do you speak Spanish?

The Witness: No.

The Court: He spoke to you in English?

The Witness: Yes.

The Court: And you to him in English?

The Witness: Right.

The Court: And you understood him?

The Witness: Some Spanish, yes, and all English.

Q. (By Mr. Diether): When you went to Pier A on July 31, was that the first time you had seen the wire that was being discharged from the White Squall? A. No.

Q. Did you see it prior to that time?

A. I don't remember. It was whenever they first opened up the ship, and I don't remember the day.

Q. How many days prior to the 31st had you seen the wire?

A. If I knew the day they started discharging the ship, I could tell you.

Q. Suppose it was on Sunday, what day after that?

The Court: Suppose it was on Sunday?

Mr. Diether: July 28th.

The Witness: It could have been because I was there at [1207] the outset of the discharging when they first opened it up.

The Court: Where was the wire? In the hold?

The Witness: In the holds, yes.

The Court: Do you know how many tons of

(Testimony of James E. Sweeney.)

wire approximately were on the ship altogether?

The Witness: Approximately 4,000 to 4500.

The Court: Were there any other cargo in the holds?

The Witness: I don't know.

The Court: Did you see any?

The Witness: No.

The Court: How big was the ship?

The Witness: Well, that is a 10,000-ton capacity. I believe that that is all it had aboard, was barbed wire.

Q. (By Mr. Diether): Did you make any inquiry at that time when you first saw the wire as to which was Mr. Londono's wire?

A. Yes, I did.

Q. Were you able to find out? A. No.

Q. Why?

A. There was no separation of stowage in the ship.

Q. What do you mean no separation of stowage?

A. Well, the reason I went at the outset of the discharging was to find out when the portion for Mr. Londono was to come out, and the dock office, one of the gentlemen in [1208] there, said that the stowage plan didn't indicate anything and it was questionable when we were going to be able to start on the portion that was supposed to be for Mr. Londono.

The Court: Did you see the wire in the hold of the ship?

The Witness: Yes.

(Testimony of James E. Sweeney.)

The Court: Were there any marks on it?

The Witness: No marks.

The Court: Identifying any segregation.

The Witness: None.

The Court: It was just wire?

The Witness: Yes.

The Court: Like a bin of wheat?

The Witness: Yes.

Q. (By Mr. Diether): Was anybody with you?

A. I don't recall who was with me on that trip.

It was necessary in order to get the stuff picked off the dock and over to the other ships so I had to go on my own time.

Q. Had you been to the dock to see the wire at any time between this first time you just described and when you were there with Mr. Londono on July 31st? A. No.

Q. Did you make any effort on July 31st, when you were there with Mr. Londono on Pier A, to identify Mr. [1209] Londono's wire?

A. Well, it was accepted at the time that the separations chalked out on the dock, Gonzalez & Blanco, and Dulien Steel, were to be followed and so there was no reason for us to ask for any separation.

Q. Did you talk to anybody from Matson at that time about the designation of Mr. Londono's wire?

A. Well, as I say, it wasn't necessary. The separations were cut out on the dock and it was assumed that that is the way it was going to be.

(Testimony of James E. Sweeney.)

The Court: Did you talk to anybody?

The Witness: No, I didn't.

Q. (By Mr. Diether): You went over to the Moore-McCormack dock after you left Pier A?

A. Yes, sir.

Q. That is some distance away, isn't it?

A. That is on Terminal Island, about five, six miles.

Q. Was the wire which you saw inside of a shed on the Moore-McCormack dock?

A. The unloaded portion was inside of the shed, and that that was on the trucks was outside the shed.

Q. How much wire was inside?

A. I don't know. [1210]

Q. Did you give directions that all the wire, both that which had been unloaded and that which was on the trucks, to be returned to Pier A?

A. No, just that that was on the trucks.

Q. Do you know whether or not it was all returned? A. I know that it wasn't.

Q. How much was returned?

A. The portion that was on the trucks.

Q. How much was it?

A. I recall two trucks, two trailers.

Q. How many rolls, how many tons?

A. I can't tell you.

Q. How do you know that that that was unloaded was not returned?

A. Because we separated part of that for the first shipment on the Mormacreed.

(Testimony of James E. Sweeney.)

Q. Did you see it yourself being separated at the Moore-McCormack docks? A. No.

Q. When did you give instructions to separate the wire that had been returned?

A. Separate the wire at Moore-McCormack?

Q. That you saw there, that you said was sent back to Pier A.

A. I still don't understand. [1211]

Q. As I understand it, Mr. Londono at that time told you not to ship that wire and you said you sent the wire outside the dock on the trucks back to Pier A; is that true? A. Yes.

Q. When did you instruct anybody to separate the wire that you sent back to Pier A?

A. You mean all the wire then, that was on the trucks and everything that was still there?

The Court: He has testified that he later instructed somebody to separate the wire that was left there, that it was not returned.

Mr. Diether: I see.

Q. You only separated——

The Court: Is that not what you are talking about, or is it something else?

Mr. Diether: Both, your Honor.

Q. Did you give instructions to separate only the wire that was in the dock and had been unloaded?

A. I gave instructions on the stuff on the Moore-McCormack dock to be separated when it was decided we were going to ship, and the good portion of that, plus the poor that we were able to deliver,

(Testimony of James E. Sweeney.)

was shipped. Then the wire at Pier A we separated it as we delivered it to other ships.

Q. What happened to the wire on the Moore-McCormack dock that was separated? [1212]

A. The good portion was shipped around the middle of August of '46, and the bad portion remained on the Moore-McCormack docks until shipped out early in '47.

Q. You mean all the wire that you then separated out remained right on Moore-McCormack docks until you shipped it out in April of 1947?

A. That is right.

Q. Was any additional wire added to that?

A. Bad wire?

Q. Bad wire. A. No.

The Court: How much longer do you think you will be on cross-examination?

Mr. Diether: All the rest of the afternoon, your Honor.

The Court: And some more?

Mr. Diether: I think so, your Honor.

The Court: Tomorrow?

Mr. Diether: A portion of tomorrow.

The Court: Very well.

Q. (By Mr. Diether): I show you Plaintiff's Exhibit 15, which is a photostatic copy of a letter, carbon copy of a letter from Mattoon and Company to M. & M. Transfer, dated July 31. Do you remember signing that letter and sending it to M. & M. Transfer? [1213]

Mr. Bunn: Does it appear to be signed, actually

(Testimony of James E. Sweeney.)

signed, or does it appear to have a carbon typing on it?

The Witness: I am sure I wrote it.

Q. (By Mr. Diether): And it was sent out in the regular course of business?

A. I assume so.

The Court: What date is that?

Mr. Diether: July 31, 1946.

Q. This last paragraph of this letter reads, "This wire must be returned to the dock at Long Beach due to a change in the shipper's plans. Please accomplish this return immediately and take no further action under delivery instructions which we issued you July 30."

Does that refresh your recollection that you ordered M. & M. Transfer to take all wire from the Moore-McCormack docks back to Pier A?

A. To take all?

Q. Of the wire that was on Moore-McCormack docks on July 31st?

A. They were not instructed to take all of it. They were instructed to take the portion that was on the trucks back, the reason being, if there was any more possibility to ship it, we could save a lot of extra expense of loading it onto the trucks and taking it back to Long Beach. [1214]

Q. What do you mean by this paragraph, "This wire must be returned to the dock at Long Beach due to change in the shipper's plans"?

A. That was the confirming of verbal instructions.

(Testimony of James E. Sweeney.)

Q. The first paragraph reads, "We enclose herewith two delivery orders covering barbed wire which you picked up for our account yesterday at Pier A, Long Beach." It doesn't say anything about that which was only unloaded.

A. That was confirmation of verbal instructions.

Q. That letter was sent in the regular course of business? A. I believe so.

Mr. Diether: May this be received as defendant Bank's next exhibit in order?

The Court: Is it not in evidence already?

Mr. Diether: No, it is not.

The Court: Plaintiff's Exhibit 15 for identification will be Bank's Exhibit C-V in evidence.

(The document referred to was received in evidence and marked Defendant Bank's Exhibit C-V.) [1215]

* * *

Q. Did you at any time see the wire which had been delivered to the Moore-McCormack dock on July 31 being separated? A. No.

Q. How do you know it was separated?

A. I ordered it.

Q. Is that the only way you know?

A. There are invoices in there for separation which I could probably dig out to support it. [1216]

* * *

The Court: Here is Exhibit 39? Is that the document you refer to?

The Witness: Yes. And my memory is also on

(Testimony of James E. Sweeney.)

that Exhibit 38-1, that Mormacreed, it might be in there.

Mr. Diether: I am speaking now about the separation that took place for the Mormacreed.

The Court: That is bills that he paid?

Mr. Diether: Right.

The Court: Who did you have do the work?

The Witness: I don't recall as to that. It would appear on Mattoon's invoice there.

Mr. Bunn: The one the court has? [1217]

The Witness: Yes.

(The exhibit referred to was passed to the witness.)

The Witness: Here is your drayage and segregation, \$958.26. That covers both drayage and segregation.

The Court: You are reading an item now from what document?

The Witness: From Mattoon and Company's invoice of August 19.

The Court: To whom?

The Witness: To J. B. Londono.

The Court: That is the separation and drayage?

The Witness: Segregation, as it is termed.

The Court: Segregation and drayage?

The Witness: Yes.

The Court: Did you have an invoice from M. & M.?

The Witness: Yes, that would have been from M. & M.

(Testimony of James E. Sweeney.)

The Court: Do you have that invoice in the file?

The Witness: I will have to look.

Mr. Diether: I call the court's attention to the summary, which is Exhibit 39 prepared by the witness, and it says Mormacreed, sorting labor, \$507.38. There is no such item on the document which the witness——

The Witness: Excuse me. I can explain that without much trouble. Our \$507.38 is the segregation portion of the freight. [1218]

The Court: Have you your segregation bills in there?

The Witness: There is freight bills in here from M. & M. Transfer combining the drayage and the segregation, and it is itemized and the tape has been run on it so it can be proven.

Q. (By Mr. Diether): Can you find it?

A. Right in here. They are all in here.

The Court: All in No. 39?

The Witness: Yes, they are all in 39 under these M. & M. freight bills, and if it is split up you will find that that is the reason.

The Court: In other words, here is what appears to be an invoice, Mattoon and Company, 8-1-46, one truck, tractor and semi-trailer to haul, four hours, one swamper, 8 hours.

The next one is three swampers. Is that what you call the swamper, the one who segregates it?

The Witness: Well, that is what they call them.

The Court: Here is another item, 8-9-46, six men to unload truck and segregate, 7 hours each.

(Testimony of James E. Sweeney.)

The Witness: Yes.

The Court: Another one, 8-9-46, six swampers to load and unload truck and segregate.

The Witness: Yes.

The Court: And five men, 8-9-46, to unload and segregate. [1219] Then another one, 8-9-46, five men.

In other words, the segregation bills are included in this 39-II.

The Witness: There was a tape this morning attached to it totaling this \$507.38 and the balance is drayage.

The Court: In other words, the way you got that figure was to go through those bills and analyze them and take out the segregation from the trucking?

The Witness: Yes.

Q. (By Mr. Diether): Is there anything on those bills to show whether that segregation was on Pier A or the Moore-McCormack dock?

A. No. In most instances, it is to haul as directed, segregate as directed.

Q. Those instructions were given verbally to M. & M. Transfer?

A. Let's take a look at the delivery orders. (Examining exhibit.) Verbal.

The Court: You were taking a look at what? You said, let's take a look. At what?

Mr. Bunn: Delivery orders.

The Witness: At the shipping documents for the Mormacreed so I could see if we did issue them verbal or in writing.

(Testimony of James E. Sweeney.)

The Court: In other words, there being an absence of [1220] written instructions, you conclude it was verbal?

The Witness: Yes.

Q. (By Mr. Diether): Do you know on what day wire was taken from Pier A for shipment on the Mormacreed?

Mr. Bunn: First, you mean?

Mr. Diether: The respective days that wire was taken from Pier A for shipment on the Mormacreed.

The Witness: It would have been late the 30th or early the 31st.

Q. (By Mr. Diether): And continued for how long?

A. As long as it took to move the 112 tons which finally moved.

Q. Do you know when that was completed?

A. No.

Q. Did Mr. Londono overhear your instructions to M. & M. Transfer relative to the removal of wire from Pier A?

The Court: How does he know?

Mr. Diether: Was Mr. Londono with him when he gave them?

The Witness: I don't know that he overheard me.

Q. (By Mr. Diether): You don't know whether he did or not? A. No. [1221]

Q. This insurance policy referred to, Exhibit 39-F, when was that prepared?

(Testimony of James E. Sweeney.)

A. It was prepared in the insurance office of the issuing insurance company.

Q. Pursuant to telephone instructions from you?

A. From phone instructions from our office.

Q. When were those given?

A. I believe August 1st.

Q. This policy is dated July 31st.

A. Yes, we had open policy privileges with the insurance company wherein they would back-date wherever we needed it.

Q. You think this policy was back-dated?

A. I am sure it was.

Q. Did you give the instructions to the insurance company personally?

A. I don't remember that I did or whether one of the people in the office did.

Q. Is there anything on that policy that indicates that the Citizens Bank was a co-beneficiary?

The Court: It speaks for itself, counsel. Let us get on.

Do you remember talking to the insurance company about it at all?

The Witness: No. I do later because they invoiced it. [1222]

The Court: It invoiced it to whom?

The Witness: To Mattoon.

The Court: And what did you do about that?

The Witness: Set about to invoice Londono for the premium cost, and it was incorrect, so I phoned them.

The Court: You phoned the insurance company?

(Testimony of James E. Sweeney.)

The Witness: Yes.

The Court: Did they re-invoice it, or do you know?

The Witness: Yes, they re-invoiced it.

The Court: To whom?

The Witness: To Mattoon.

The Court: For the account of——

The Witness: Londono.

The Court: ——Londono?

The Witness: Yes.

The Court: Or for the account of the bank?

The Witness: It is for the account of Londono.

Q. (By Mr. Diether): When did Mr. Londono again give you instructions to ship the wire to South America after he told you not to ship it on July 31st? A. On August 1st or 2nd.

Q. He told you to go ahead and ship—what did he tell you at that time?

A. Well, he reconsidered and had obtained from us the [1223] approximate segregation costs and decided to segregate all the goods he possibly could and proceed with the shipment.

The Court: Of all of it?

The Witness: I don't know what his intentions were at the time.

Q. (By Mr. Diether): What did he tell you?

A. Take the best we could find, as much of it as possible.

Q. And ship, continue to ship pursuant to the bank's instructions? A. Yes.

Q. Of July 31st? A. Yes.

(Testimony of James E. Sweeney.)

Q. And you ordered the segregation of the wire that remained on Pier A, is that right?

A. As it was picked up and delivered it was segregated. That was the orders.

Q. And was M. & M. Transfer doing that you for you?

A. They did on the Moore-McCormack ships and Marine Terminals I believe on the Grace Line ships.

Q. Was any inventory made of the wire which was set aside or segregated out as too bad to ship?

A. No. [1224]

Q. Where was it placed on the dock with respect to the other wire?

A. Well, the procedure was to keep moving it by a process of elimination, just move over the bad stuff and take out the good, and then when you got as much of one grade you just kept moving it until it was real bad.

Q. Was there any segregation of the very rusty wire out from the other then?

A. It was impossible.

Q. Why was it impossible?

A. From the labor angle. There wasn't room to spread it. It was hard to get labor to work the stuff. It was very difficult to work.

Q. By segregation then you mean just a process of continuing to select the best wire?

A. Selecting the best available.

The Court: In the matter of the labor, did it require hand-handling of the rolls?

The Witness: Hand labor on all of it.

(Testimony of James E. Sweeney.)

The Court: How did they pick them up?

The Witness: With gloves. They had to buy special equipment and special covering for their legs.

Q. (By Mr. Diether): Then the quantity of wire that was actually segregated out as being too rusty to ship was never actually [1225] inventoried or weighed? A. No.

Q. Did you accompany Mr. Londono to Mr. Grinstein's office on August 5th? A. No.

Q. Were you at the dock with Mr. Londono and Mr. Grinstein on August 5th?

A. I don't remember.

Q. When did you go to the dock again after July 31st? A. I don't remember that.

Q. You have no recollection of the next time you went? A. No, I don't.

Q. After August 5th, did Mr. Londono give you any new instructions with respect to shipping the wire? A. No.

Q. Or with regard to segregation? A. No.

Q. Would the same thing be true with respect to August 7th? A. Yes.

Q. Do you know whether or not Mr. Londono ever demanded of Dulien that he return the purchase price for the wire? [1226] A. No.

Mr. Hubert Morrow: You mean the witness doesn't know?

Q. (By Mr. Diether): You don't know?

A. I do not know.

(Testimony of James E. Sweeney.)

Q. Do you know whether or not Mr. Londono ever offered to return all the wire to Dulien?

A. I don't know.

The Court: Do you know whether or not he ever demanded the money back from the bank?

The Witness: I don't know that.

Q. (By Mr. Diether): Did you ever have any discussion with Mr. Londono with regard to the letter that he received from Dulien on August 7th?

A. I don't know the letter.

Q. That is Plaintiff's Exhibit 25.

I show you Plaintiff's Exhibit 25 and ask you if you have ever seen that document before?

A. I don't recall having seen it.

Q. And you had no discussion with Mr. Londono about it? A. No.

The Court: That is dated August 7th?

Mr. Diether: That is dated August 7th. [1227]

The Court: Were you with Mr. Londono on or about August 5th on a visit by him to Dulien Steel and a conversation with Mr. Grinstein?

The Witness: I don't remember that I was.

The Court: Were you ever present at a conversation between Mr. Londono and Dulien or Grinstein or Stanley concerning the condition of the wire and the renegotiation of the price?

The Witness: Yes, on the 31st.

Q. (By Mr. Diether): July 31st?

A. July 31st; yes.

The Court: That was when you had the freight bill down there?

(Testimony of James E. Sweeney.)

The Witness: That is right.

The Court: What happened there?

The Witness: There Mr. Rendon more or less acted as spokesman for Mr. Londono.

The Court: Was this before you went to the harbor?

The Witness: Before.

The Court: Yes?

The Witness: And he told Mr. Grinstein that Mr. Londono was a little bit concerned that the wire might not be up to specifications, and Mr. Grinstein said that there wasn't any worry on that score because Dulien was here in [1228] business to stay, and if there was any question that would come up they would discuss it and arrange any settlement that they might agree to.

Q. (By Mr. Diether): Was that all the conversation at that time?

A. That was the substance of it.

Q. Who was present at that time?

A. Mr. Grinstein, Mr. Rendon, Mr. Londono, myself.

Q. Was Mr. Stanley present? A. No.

Q. Was Mr. Dulien present? A. No.

Q. Was that the only time you were present at any conversation between Mr. Londono and any representative of Dulien relative to renegotiation of the price of the wire or the quality of the wire?

A. Yes.

Q. Did you have any telephone conversation with Mr. Powers the first week in August of 1946

(Testimony of James E. Sweeney.)

relative to the condition of the wire that was delivered to Mr. Londono? A. None that I recall.

Q. Did this segregation of wire that you are speaking about continue each time you took delivery of wire for shipment on a vessel, the segregation just continued as you took delivery from [1229] Pier A? A. Yes.

Q. There was no segregation except at times when you took delivery from Pier A; is that right?

A. That is right.

The Court: In other words, the idea was to go down and get 2,000 tons of the best wire?

The Witness: You could possibly get, yes.

Q. (By Mr. Diether): When did you receive instructions from Mr. Londono not to ship any further wire to South America?

The Court: Is this a new question, or is this the same question we asked this witness this morning?

Mr. Diether: No, this pertains not to the wire that was on the Moore-McCormack dock; this pertains to after he had shipped the wire.

The Court: The witness has testified that on July 31st Mr. Londono told him not to ship any wire. Now, is this subsequent to that?

Mr. Hubert Morrow: He said a day or two later he changed his instructions.

Mr. Diether: Yes, but I am not asking him after he told him to go ahead again, but when did he subsequently thereafter tell him not to ship any more?

(Testimony of James E. Sweeney.)

The Witness: I don't remember the date, but it was possibly September 7th to 15th. [1230]

Q. (By Mr. Diether): Somewhere in there?

A. Yes.

Q. What did he tell you at that time?

A. I don't remember how he issued the instructions. It was verbal, I am sure.

Q. No written instructions? A. No.

Q. This wire was segregated out on the Moore-McCormack dock. Was it allowed to remain there until April without any further action on your part?

The Court: You mean the wire that did remain until April?

Mr. Diether: Yes.

The Court: Without further action. What do you mean?

Q. (By Mr. Diether): Any further action or disposition of it on your part?

A. It was there. The steamship company wanted us to move it, but we couldn't give any disposition on it.

The Court: What are you getting at, whether or not it was put under canvas or under cover?

Mr. Diether: Yes, why was it allowed to remain on Moore-McCormack's dock from August, '46, until April, '47?

The Witness: Because of the controversy that arose. [1231] It was too bad to ship, at least at the outset, and Mr. Londono couldn't give us any instructions for shipping, so it remained on the dock.

Q. (By Mr. Diether): It remained there just

(Testimony of James E. Sweeney.)

because Mr. Londono didn't tell you anything to do with it?

Mr. Bunn: Because it was too bad to ship, he said.

The Witness: Yes, he was unable to give us any instructions. He didn't want to ship it there.

Q. (By Mr. Diether): Didn't you subsequently notify the shipping company that you were going to abandon it? A. Yes, we did.

Q. Why did you do that?

A. My recollection is that the matter was brought to Mr. Londono's attention and to the bank's attention and to Mr. Bunn's attention and no one could reach any agreement, so the steamship people—that dock space is valuable to them—they wanted a decision as to what was going to be done with that wire, and we had no alternative but to arbitrarily in the absence of instructions tell them we were going to abandon it.

Q. Did Mr. Londono tell you to abandon it?

A. No.

Q. You did that of your own volition? [1232]

A. He may have agreed. I don't remember.

The Court: He thereafter withdrew the instructions?

The Witness: That is right.

The Court: Made as to the shipment?

The Witness: Yes. And I believe it was done with the knowledge of all concerned.

Q. (By Mr. Diether): I show you Defendant Bank's Exhibit C-Q for identification. Have you seen that letter before? A. Yes.

(Testimony of James E. Sweeney.)

Q. You received that in due course on or about the date it is dated? A. Yes.

Q. And did you call that letter to Mr. Londono's attention?

Mr. Bunn: What is the date of that?

The Witness: January 29, 1947.

Q. (By Mr. Diether): Did you call that to Mr. Londono's attention?

A. I was not in Mattoon's office in Los Angeles at that time.

Q. You mean you had left prior to January, 1947?

A. I was in San Francisco with Mattoon and Company.

Q. When did you leave the Los Angeles office of [1233] Mattoon and Company?

A. Early in December, '46.

Q. And you didn't subsequently have any connection with the Los Angeles office of Mattoon and Company?

A. Yes. I knew what was going on on it, because I personally had conducted the whole transaction.

Q. Then you personally knew that that letter was received on or about the date it bears?

A. Yes, I do.

Mr. Diether: We will ask that it be offered as Defendant Bank's Exhibit next in order.

The Clerk: It is already marked.

The Court: What is it?

The Clerk: C-Q, your Honor.

(Testimony of James E. Sweeney.)

The Court: Any objection? (No response.)

Admitted.

(The document referred to was received in evidence and marked as Defendant's Exhibit C-Q.) [1234]

* * *

May 3, 1950.

Mr. Diether: If the court please, I would like to introduce in evidence at this time several documents that were identified by this witness yesterday.

The first one is Plaintiff's Exhibit 40-4-B. That is the unsigned bill of lading of Moore-McCormack Lines covering 2828 rolls of barbed wire. I will ask that that be marked as defendant bank's exhibit next in order.

Mr. John Morrow: May I examine that first, Mr. Diether?

The Court: That is the unexecuted document?

Mr. Diether: That is right.

(Exhibiting document to counsel.)

Mr. Diether: Counsel calls my attention to the fact that there are three copies of this bill of lading.

Mr. Bunn: And they are different.

Mr. Diether: Attached to this group of papers, which is marked Plaintiff's Exhibit 40-4. I am not particularly interested in which one has been marked. Perhaps all three of them ought to be marked so there will be no question about it.

(Testimony of James E. Sweeney.)

Mr. Bunn: Which one are you asking the court to receive [1240] in evidence?

Mr. Diether: Let's have all three marked as Defendants' exhibit next in order so that there will be no question about them if there is any difference between them.

Mr. Bunn: I object to the introduction, first, on the ground that they are immaterial, not having been executed and acted upon; second, on the ground that there is not sufficient foundation laid for any of them, and particularly no sufficient foundation laid for 40-4-C in that there are markings on there as to which no testimony has been given.

The same is true of 40-4-D.

Mr. Diether: I am not offering the markings written on there, only the typewritten portion.

Mr. Bunn: My first two stated objections I ask the court to consider.

The Court: Let me see them .

(The documents referred to were passed to the court.)

Mr. Diether: This witness, you will recall, your Honor, testified that it was first contemplated that that quantity of wire would be shipped on the Mormacreed and those bills of lading were then made out, and it corresponds with the delivery order which was sent to Matson. Subsequently that shipment was increased from 2825 rolls to 4017 rolls. But that was the original contemplation of the

(Testimony of James E. Sweeney.)

parties as evidenced by the delivery order which was sent by Mattoon & [1241] Company to Matson and which is Defendants' Exhibit C-U.

The Court: They do not appear to be copies.

Mr. Diether: I will only offer the first one then. May the top one only be offered? That will be sufficient for my purpose.

The Court: 40-4-B will be admitted in evidence as Defendants' Exhibit C-W.

(The document referred to was received in evidence and marked Defendants' Exhibit C-W.)

Mr. Diether: The clerk's list of exhibits which he handed to counsel yesterday shows that defendant bank's Exhibit C-D was admitted in evidence, and at this time I wish to offer in evidence Defendants' Exhibit C-D1, which this witness identified yesterday as bearing his signature.

The Court: Admitted.

(The document referred to was received in evidence and marked Defendants' Exhibit C-D1.)

Mr. Diether: Mr. John Morrow has handed to me a carbon copy of a delivery order from Mattoon & Company to Matson dated August 22, 1946. That is the document which is referred to on our list of exhibits as Item No. 26.

Mr. Morrow informs me that they were not able to find the instructions to Koppel Bros. which is referred to in that document.

(Testimony of James E. Sweeney.)

The Court: That is marked C-M1 and [1242] C-M2.

Mr. Diether: That is right.

Mr. Bunn: May I ask, was Mr. Sweeney interrogated yesterday about this?

Mr. Diether: No, he has not been.

Mr. Bunn: You are asking for it to be marked for identification?

The Court: It is already marked for identification.

Mr. Diether: The carbons have been marked.

The Court: That will be C-M3 then.

(The document referred to was marked Defendants' Exhibit C-M3 for identification.)

Cross-Examination

(Continued)

By Mr. Diether:

Q. I show you Defendants' Exhibit C-M3 and ask you if you have seen that document before?

A. Yes.

Q. Does it bear your signature? A. Yes.

Q. Was that prepared in the regular course of business? A. Yes.

Q. And was it sent to Matson on or about the date it is dated? A. Yes.

Mr. Bunn: To whom?

Mr. Diether: To Matson. [1243]

Q. I show you Defendants' Exhibit C-M1, which is a carbon copy of a letter apparently from Mattoon & Company to Koppel Bros., dated——

(Testimony of James E. Sweeney.)

The Court: C-M1 should be the carbon of the document you just identified. C-M2 is indicated by my notes to be the carbon copy of instructions from Mattoon to Koppel Bros.

Mr. Diether: They haven't been so marked by the clerk, your Honor. They are just the reverse.

The Court: Very well. I can change my notes.

Q. (By Mr. Diether): Referring again to Defendant Bank's Exhibit C-M1, which is the purported instructions to Koppel Bros., dated August 22, 1946, that document was taken from Mattoon & Company's file. Was that the instructions which are referred to in Defendant Bank's Exhibit C-M3?

A. (Examining document.)

The Court: Is that a copy of them?

Mr. Diether: That is right.

The Witness: Yes, that confirms it.

Q. (By Mr. Diether): This carbon is a little hard to read, due to the fact that it is a little jumpy. I wonder if you would read those instructions into the record.

A. It is addressed to Koppel Bros., dated August 22, 1946. [1244]

"Segregate barbed wire for loading to rail cars as indicated below for movement to Berth 53 Outer Harbor.

"500 tons barbed wire ex SS White Squall, bill of lading LA-29, to be segregated as follows:

"250 tons galvanized, 250 tons black, tons are short tons, badly rusted rolls to be set aside. Keep

(Testimony of James E. Sweeney.)

a tally of various weight rolls of both types so that weights will be correct. Load only very best wire, loading least amount of rusted possible. Tally if any rusted or damaged rolls loaded to the cars must be kept and signed for with exceptions noted.

“Please see that above instructions are closely adhered to.”

And it shows a copy of that to the Matson Line.

Mr. Diether: We will offer all of those in evidence, being C-M1, C-M2 and C-M3 as defendant bank's exhibit next in order.

The Court: They will not be the next in order. They are in evidence as C-M1, C-M2 and C-M3.

(The documents referred to, previously marked Defendants' Exhibits C-M1, C-M2 and C-M3 were received in evidence.)

Q. (By Mr. Diether): Do you know whether those instructions to Koppel [1245] Bros. were carried out? A. No.

Q. Are those the only written instructions that were ever given in connection with the segregation of the wire?

The Court: To Koppel Bros.?

Mr. Diether: To Koppel Bros.

The Witness: I have to say that Koppel didn't do the job.

Q. (By Mr. Diether): Who did do the job?

A. Marine Terminals.

Q. Did Koppel Bros. do any work for you?

(Testimony of James E. Sweeney.)

A. The only work that I recall was the supervision of segregation made by M & M Transfer.

Q. Were these instructions that you have given to Koppel Bros. in C-M1 turned over to Marine Terminals?

A. I don't believe so.

Q. Were these instructions canceled?

A. Koppel couldn't handle the work because he couldn't get the labor and that automatically canceled it.

Q. What instructions did you give to Marine Terminals in connection with that same shipment?

A. Verbal. My recollection is that they were similar to the written instructions there.

The Court: Do you know whether or not Koppel handed [1246] their instructions to Marine Terminals?

The Witness: He may have.

Mr. Bunn: You mean you do not know?

The Witness: I don't know.

Q. (By Mr. Diether): Were they verbal or written to Marine Terminals?

A. I don't know.

Q. I show you Defendant Bank's Exhibit C-S, which purports to be a letter, carbon copy of a letter from Mattoon & Company to Moore-McCormack Lines. Was that letter prepared in the regular course of business?

A. Yes.

Q. And sent to Moore-McCormack Lines on or about the date it is dated?

A. Yes.

Mr. Diether: I will ask that that be marked in evidence.

(Testimony of James E. Sweeney.)

The Court: Admitted.

(The document previously marked Defendants' Exhibit C-S was received in evidence.)

Q. (By Mr. Diether): I show you Defendant Bank's Exhibit C-R, which purports to be a carbon copy of a letter from Mattoon & Company to Indies Terminal, dated April 24, 1947. Was that letter prepared in the regular course of business and sent to Indies Terminal on or about the date it is dated? [1247] A. Yes.

Q. That is the original of it? A. Yes.

Mr. Diether: I will ask that that document be marked as defendant bank's exhibit next in order.

The Court: Let me see it.

(The document referred to was passed to the court.)

The Court: C-S is dated March 31 and C-R is dated April 24, is that correct?

Mr. Diether: Yes.

The Court: They both relate to the same 610 bales of wire?

The Witness: Yes.

The Court: Admitted.

(The document previously marked Defendants' Exhibit C-R was received in evidence.)

* * *

Q. Did you employ Best & Company to make the report which is attached to Plaintiff's Exhibit 39?

The Court: Best?

(Testimony of James E. Sweeney.)

Mr. Diether: And Company. [1248]

The Witness: You mean Toplis & Harding, don't you?

Q. (By Mr. Diether): The document I refer to has been marked as 39-C and it purports to be signed by Best & Company.

A. May I see it, please?

(The document referred to was passed to the witness.)

The Witness: Yes.

Q. (By Mr. Diether): Did you order that survey that is reported there in that document?

A. Yes. [1249]

* * *

Q. (By Mr. Diether): Mr. Sweeney, were instructions given to Best & Company by you in connection with any survey of the wire here in controversy?

A. I recall that I phoned Best & Company and talked to the gentleman that signed that, Mr. Swanson, outlined the situation, what we had down there and what we needed, and instructed him to go through their usual type of survey.

Q. What wire did you tell him to make a survey of? [1251]

A. I explained to him that there was a separation that was not too clearly defined, but the portion that was set out on the dock where it was marked for Dulien Steel was the portion to be surveyed.

(Testimony of James E. Sweeney.)

Q. Was the purpose of that survey merely to collect evidence for this trial?

A. It was done on the instructions to me by Mr. Londono.

* * *

The Court: What is wrong with collecting evidence for a trial? It is a good thing once in a while.

Mr. Diether: But are the defendants going to be charged with the expense of collecting the evidence?

The Court: Maybe so.

Mr. Diether: That is the first time that I have heard of that being done.

Mr. Bunn: It is for mitigation of damages, if your Honor please, whatever was done.

The Court: What was the date of the report again? [1252]

The Witness: August 22nd.

* * *

Q. (By Mr. Diether): Mr. Sweeney, was any record kept of the quantity of galvanized wire that was shipped to South America?

Mr. Bunn: As distinguished from black?

Mr. Diether: From black, yes.

The Witness: No.

Q. (By Mr. Diether): Either by weight or by number of rolls? A. No.

Q. Was there any record kept of the quantity of

(Testimony of James E. Sweeney.)

galvanized wire that was delivered to Gonzalez and Blanco?

A. I don't know.

Q. That is under the sale from Mr. Londono to Gonzalez & Blanco?

A. No.

Mr. Bunn: Pardon. May I have that question and answer read?

(The record referred to was read by the reporter as follows: [1253] "Q. That is under the sale from Mr. Londono to Gonzalez & Blanco? A. No.")

Q. (By Mr. Diether): And that would be true both with respect——

The Court: Is there some evidence here that Londono sold galvanized wire to Gonzalez & Blanco?

Mr. Bunn: As distinguished from black wire, your Honor means?

The Court: Yes.

Mr. Bunn: No.

The Court: I did not recall any.

Your question was based upon the proposition that he had made sales. I did not recall that there was any evidence of sales of galvanized wire.

Mr. Diether: The wire I think was sold without any reference to whether it was black or galvanized, but I was inquiring of this witness if any record was kept of that, of the wire that was delivered to Gonzalez & Blanco, whether any record was kept as to what quantity was galvanized and what quantity was black.

The Court: If there was any galvanized.

(Testimony of James E. Sweeney.)

Mr. Diether: If there was any.

The Court: There is no evidence yet that there was any.

Mr. Diether: Assuming that there was any. And I take [1254] it his answer is that no record was kept.

The Witness: No.

Q. (By Mr. Diether): And that would be true also of black wire if there was any? A. Yes.

Q. Did you accompany Mr. Londono to the office of Matson Navigation Company in Wilmington sometime in August, 1946? A. Yes.

Q. And do you know what date that was?

A. No, I don't.

Q. Was anyone with you besides Mr. Londono?

A. Just he and I.

Q. Will you state what occurred on that occasion? A. He wanted to——

Mr. Bunn: Pardon me. State what was said, Mr. Sweeney. This word "wanted" is a conclusion word.

The Witness: Well, Mr. Londono said, in substance, he wanted to see——

Q. (By Mr. Diether): Said to whom?

A. To me before we went.

The Court: That is August 31st now?

The Witness: I don't remember the date. [1255]

The Court: What date did you ask him?

Mr. Diether: I didn't ask him. I said sometime in August and he said he went in August, as I recall.

The Witness: Yes.

(Testimony of James E. Sweeney.)

He stated that he wanted to go to Matson and see if he could, or ask the agent there if he could, see the original bill of lading covering the movement of the wire that was sold to him.

We went to Wilmington, and talked to Mr. Ford.

Q. (By Mr. Diether): You talked to Mr. Ford at Wilmington?

A. Yes. He is the freight agent. And I requested of Mr. Ford, or asked him, if we could see the original bill of lading covering the movement, and he said that he did not have it in his files but then Mr. Londono wanted to see what a Matson bill of lading looked like and Mr. Ford presented a sample of the Matson bill of lading and Mr. Londono examined it, and that was all that took place.

Q. Did you see any copy of any bill of lading that involved the shipment of wire here involved?

A. I saw no copy or no lading that had any relation—just the one blank sample. That is all the documents we saw.

Q. Did Mr. Londono have any documents with him? A. None that I know of.

Q. Nothing on the document which was shown to Mr. [1256] Londono, it was merely a blank form without any typing on it?

A. It was a blank bill of lading with the usual contracts and setup on it.

Q. Did you have it in your hands? A. No.

Q. Did Mr. Londono have it in his hands?

A. Yes.

Q. Was any inquiry made by Mr. Londono at

(Testimony of James E. Sweeney.)

that time as to whether the bill of lading involving the shipment of the wire here in question was clean or not? A. I don't recall that he asked that.

Q. Did he inquire whether or not the shipment of wire here involved was on a straight or order bill of lading?

A. No, I don't recall that he asked that.

Q. Did he ask to see a copy of the bill of lading in question? A. He did.

Q. What was the reply?

Mr. Bunn: That has already been asked and answered.

The Court: It has been asked and answered. The objection is sustained.

Q. (By Mr. Diether): You mentioned the fact that strike conditions existed at the Harbor. Did they affect the taking of delivery of the wire by Mr. Londono at any time during the month [1257] of August?

A. The only delay that occurred as the result of strike conditions was when the ship first docked, at which time there was a work stoppage, I believe, for two or three, possibly four, days.

Q. Was that just for the unloading of the vessel?

A. The discharge of the vessel; yes.

Q. It didn't have anything to do with taking cargo away from the dock?

A. No, except it delayed the entire move.

Q. In other words, it delayed the unloading of the vessel? A. Yes.

(Testimony of James E. Sweeney.)

Q. Do you know on what date the total cargo of wire was discharged from the White Squall?

A. No, I don't.

Q. Did you know what day those strike conditions existed that you have referred to which prevented the unloading of the cargo from the White Squall?

A. Well, the week that ended July 27, I believe; the work stoppage was around the 25th or 26th.

Q. Of what? A. Of July.

Q. 25 or 26 of July?

A. That is merely my rough recollection. [1258]

Q. You gave delivery orders to Matson for delivery of wire to Gonzalez & Blanco, did you not?

A. To Gonzalez & Blanco?

Q. Yes. A. You mean on the portion——

Q. That was sold by Mr. Londono to Gonzalez & Blanco.

A. I would have to see those files. I don't recall whether I gave them to Matson or to Gonzalez or who they were made out to.

Q. Could you tell by looking at the file?

A. Yes.

Q. Which file, which portion do you wish to see?

A. I don't remember the number of that exhibit. It starts where we started yesterday morning.

The Court: No. 40?

The Witness: I think so.

The Court: Or No. 39?

The Witness: No, it wouldn't be 39. I think it is 40.

(Testimony of James E. Sweeney.)

The Court: No. 40 is the bills of lading with the attendant documents, the shipments.

The Witness: Well, it was either just before those documents or after.

The Court: Let us see the rest of Exhibit 39, Mr. Clerk.

(The document referred to was passed to the court.) [1259]

The Court: That is the supporting documents?

The Witness (Examining documents): It shouldn't be here. No, it is not in this batch. May I step over to the desk and look?

The Court: Yes, you may do so.

The Witness (Examining files): That is the one.

The Court: That is Exhibit?

Mr. Diether: The witness has indicated that Exhibit 40-1 is the portion of the file that he referred to.

Q. Referring to that exhibit, can you now answer the question?

A. Yes. They were issued to Transmarine Navigation.

Q. Were they directed to deliver a certain quantity of wire?

A. Yes, in accordance with what Mr. Gonzalez indicated he wanted to take and pay for.

Q. Was it in tons or in rolls? A. Tons.

Q. Was any record kept by Mattoon & Company as to the number of rolls of wire that was delivered to Gonzalez and Blanco? A. No.

(Testimony of James E. Sweeney.)

The Court: That is, as distinguished from any other kind of a record?

The Witness: Yes; that is right. [1260]

The Court: In other words, your records are there?

The Witness: That is correct.

Q. (By Mr. Diether): Did you keep any record at all of the actual weight of the wire that was delivered to Gonzalez & Blanco?

A. None other than what was indicated on the delivery orders.

Mr. Laven: What was that last answer?

(The answer referred to was read by the reporter as follows: "A. None other than what was indicated on the delivery orders.")

Q. (By Mr. Diether): On Exhibit 39 you have indicated certain additional expenses that Mr. Londono had in connection with this transaction. One of the first items that you have listed there is dock storage, Pier A, Long Beach, \$2837.45. Can you find the detailed invoice for that dock storage which Mattoon & Company received from Matson or from Transmarine?

A. It is in the file of either the Mormacreed or the West Wind. That is 38-1, 2 and 3, I believe.

Q. I am handing the witness Plaintiff's Exhibit 38-1, 2 and 3 for identification. Are those the documents that you refer to?

A. I will have to find the supporting [1261] in-

(Testimony of James E. Sweeney.)

voice. (Examining file.) It must be in the rest of Exhibit 39. (Examining documents.) Yes.

Q. The witness has indicated Exhibit 39-FF, which is a statement of Mattoon & Company, or purports to be a statement of Mattoon & Company, to the Citizens National Bank. I was asking you for the detail of the demurrage charges from Matson or from Transmarine.

A. The explanation is here and it reads: "Dock demurrage and storage for 894 tons barbed wire per attached Transmarine Navigation invoice No. 478." Now there is no copy of that invoice in this file but Transmarine has it at the dock.

Q. Do you know when dock demurrage started on this shipment?

A. I don't know the exact day.

Q. Did you know what period of time was covered by that demurrage?

A. I don't know that either.

Q. Do you know when it terminated?

A. It didn't terminate, as long as the wire stayed there on the dock, demurrage accrued.

Q. To whom?

A. You mean against whom?

Q. Yes.

A. Against whoever owned the wire. [1262]

Q. What was the amount, how many tons?

A. 894.

Q. 894 tons? A. Yes.

Q. Was that for any specified time for that quantity of wire, or was it—

(Testimony of James E. Sweeney.)

A. Yes, there is a detail on that, and it is available. The records are kept, in this case, in Transmarine's office.

Mr. Bunn: Didn't you subpoena the Transmarine files?

Mr. Diether: Yes. It is here.

Q. You have no personal knowledge of any of that demurrage other than what is on the bill from Transmarine?

A. No. We transmitted or supported our statement with a copy of Transmarine's invoice.

Q. Is that the bill you refer to that you got a reduction of \$3000 on?

A. No, it was subsequent to that time.

Q. Covering what period of time?

A. I believe after September 30, 1946.

Also to add to that, the strike started September 1st and I believe, as was the custom, the Harbor Department automatically reduced the dock demurrage charges for all cargo owners that had merchandise on the docks, but the reduction that we obtained after the 30th was below the allowance that the Harbor Department made. [1263]

Q. That reduction was made as a result of strike conditions in the Harbor?

A. The reduction during September 1st to September 30 period, and then we obtained additional reduction because that wire I don't believe is all cleaned off the dock until sometime in December.

Q. Do you know that \$3000 reduction that you obtained, did that continue on through to December?

(Testimony of James E. Sweeney.)

A. Well, it was the period between the 30th of September and whenever the final cleanup was made in December.

Q. You mean when the wire was finally removed from Pier A? A. That is right.

Q. On Defendants' Exhibit 39, where you have listed these extra expenses, there is an item of \$130.50 for extra drayage. Do you know what that is for?

A. Yes, that covers the movement of the wire from Moore-McCormack Dock back to Pier A on the initial delivery.

Q. That is the one that you told us about that you sent back that was on the unloading trucks?

A. Yes. [1264]

* * *

Cross-Examination

By Mr. Dasteel:

Q. Mr. Sweeney, I believe you testified that Mr. Londono used your offices as his headquarters. Is that so?

Mr. Bunn: I don't think he so testified as to the word "headquarters."

The Court: No, he didn't.

Mr. Bunn: I object to the question.

Q. (By Mr. Dasteel): Did Mr. Londono occupy a desk in your office? In other words, was it available to him and did he use it?

A. Space is always available, but he didn't occupy a desk and he didn't use it.

(Testimony of James E. Sweeney.)

Q. Did he receive telephone call at your office?

A. Occasionally, messages.

Q. How frequently would you say he came to your office during the period that this shipment applied?

A. There is no way of telling. If matters had to do [1266] with the shipment, the wire was pressing, he might come frequently and stay a fair length of time; at other times I might not see him for a day or two.

Q. Did he use your office, your stenographer or your help for the purpose of writing letters to Colombia or other people?

A. On a few occasions. He couldn't have done it to Colombia because the girl we had couldn't take Spanish dictation.

Q. Were your files covering this transaction open to him? A. Yes.

Q. And he could remove documents at any time he chose? A. Yes.

The Court: Did he ever have access to the files, that is, take the files?

The Witness: Never from the office, but he used them in the office.

The Court: He looked at them in the office?

The Witness: Yes.

Q. (By Mr. Dasteel): When was the first time that you saw any wire unloaded from the steamer White Squall onto the dock at Pier A?

A. Well, it was on a morning that I don't remember when the ship was first starting to dis-

(Testimony of James E. Sweeney.)

charge, and they were loading direct into gondola cars and it was wire for Gonzalez & [1267] Blanco.

Q. Monday, I believe, was July 29, 1946——

Mr. Bunn: Are you asking him?

Mr. Dasteel: I am refreshing his memory. You may correct me if I am wrong, Mr. Bunn.

The Witness: It could have been either Sunday or Monday morning. I believe they started to discharge on Sunday, which would have been the 28th.

Q. (By Mr. Dasteel): Were you there on Sunday, the 28th? A. I could have been.

Q. When is your first distinct recollection of the day on which you first saw the wire?

A. I can't tell you.

The Court: You mean any of the wire?

Mr. Dasteel: Yes, any of the wire on board the White Squall, either on board or on dock.

The Witness: It was on that morning, and it was either the 28th or the 29th, but I can't clearly remember.

Q. (By Mr. Dasteel): Now when was the first time you saw wire on the Moore-McCormack dock?

A. The afternoon of July 31st.

Q. That would be on a Wednesday?

A. Yes. [1268]

Q. And that wire was delivered there for and by Mr. Londono? A. Yes.

The Court: Delivered there for and by, was that your question?

Mr. Dasteel: For and by the instructions of Mr. Londono.

(Testimony of James E. Sweeney.)

The Witness: Yes.

Q. (By Mr. Dasteel): Now you testified that among the wire at the Moore-McCormack dock that you observed some of the wire was rusty.

A. Yes.

Q. How did you know it was rusty, by the color or did you make any other test?

A. It wasn't necessary, we all know what rust looks like.

Q. I beg to differ with you. We do not all know.

What type of an observation did you make to come to the conclusion that the wire was rusty?

The Court: You know what rust looks like, that is what you mean to say?

The Witness: I do know.

Q. (By Mr. Dasteel): Did you go over and touch any of the wire and examine it closely?

A. Why, yes. We walked around and I did personally, I [1269] looked at the wire that was on the pallet boards, looked at the wire that was still on the trucks and to me—and I believe I know what rust is—it was obviously rusty.

Q. From what distance did you observe the wire?

A. From here to here. (Indicating.)

The Court: Indicating immediately adjacent.

The Witness: One foot.

Q. (By Mr. Dasteel): Can you tell us the dates that that wire was actually picked up and removed

(Testimony of James E. Sweeney.)

from Pier A at Long Beach? A. The first?

Q. Yes, the very first.

Mr. Bunn: For whom? I object to the question as indefinite and uncertain as to what he means.

The Court: To where?

Mr. Dasteel: To any place.

Mr. Bunn: For Londono as distinguished from Gonzalez & Blanco?

Mr. Dasteel: I haven't said anything about Gonzalez & Blanco. I am talking about the Londono wire right now.

The Witness: Well, the first day would be July 30 when it was picked up.

Q. (By Mr. Dasteel): Picked up by the M & M Transfer Company? A. Yes. [1270]

Q. On instructions which you received from Londono? A. Yes.

Q. That was on July 30? A. Yes.

Q. Was that in the forenoon or the afternoon?

A. I don't know. I wasn't at the dock.

Q. That is your statement, that the wire was was picked up on instructions of Londono by the M & M Transfer Company who received instructions from you? A. Yes.

* * *

Q. (By Mr. Dasteel): I show you Plaintiff's Exhibit 39-6 and draw your attention to a bill of lading issued by the Moore-McCormack Lines——

Mr. Bunn: Under what date?

The Witness: April 21, 1947.

(Testimony of James E. Sweeney.)

Mr. Dasteel: April 21, 1947.

Q. —and ask you if you prepared this bill of lading.

A. I did not. It was prepared in Mattoon's office. [1271]

* * *

Q. I ask you, would you call that a clean bill of lading?

Mr. Bunn: I object to the question. The document speaks for itself.

The Court: I think the question is proper. The objection is overruled. That is, in the custom and practices of the trade?

Mr. Dasteel: That is the question.

The Witness: Yes.

Q. (By Mr. Dasteel): And there is no indication on the said bill of lading that the wire was rusty or otherwise damaged, is there? A. No.

Q. And then according to this bill of lading, which sets forth the fact that 477 bales of barbed wire were shipped by J. B. Londono, the shipper, to Cartagena, Colombia? A. Right.

Q. On April 21, 1947? A. Yes.

The Court: Is that stamped "non-negotiable"?

The Witness: It is the third original. [1272]

The Court: The original would be stamped "non-negotiable"?

The Witness: Let's see. Well, it so happens they did not on this one stamp it "non-negotiable."

The Court: Did they stamp the original?

The Witness: No.

(Testimony of James E. Sweeney.)

Mr. Dasteel: There is a copy here, your Honor, which states "copy, non-negotiable," just a copy.

The Court: It says the copy is non-negotiable?

The Witness: Yes.

Mr. Dasteel: Which would indicate that the original might have been negotiable.

Mr. Bunn: I move to strike counsel's last statement. He is not testifying.

The Court: I regard it as argument. [1273]

* * *

Mr. Dasteel: I just want to show, your Honor——

The Court: I know what you want to show.

In the custom of the trade, Mr. Sweeney, assuming that that shipment was made as indicated in that bill of lading which counsel just laid before you, where would the original bill of lading now be?

The Witness: I can explain——

The Court: Or would it have last been in its course of shipment?

The Witness: There is three loadings in all areas except very few and you always issue three.

The Court: Three originals?

The Witness: Three originals, and there is a statement on the lading that says one accomplished, the others stand void, the reason being you send them through the mail separately, and if one, to assure its arrival, in case one is lost one is almost certain to get there. And in this case [1274] the first and second originals were sent in separate mails?

(Testimony of James E. Sweeney.)

The Court: To?

The Witness: To the consignee. And the third one remained in the files, and whichever one he took delivery with at destination was surrendered to the steamship company and remains in their files at destination.

The Court: So that it is a custom in the trade to mail two original bills of lading to the consignee?

The Witness: In separate mails; yes.

The Court: In separate mails?

The Witness: Yes.

The Court: And upon his surrender of either one, when you say original, one may be a carbon copy but signed as an original?

The Witness: Yes.

The Court: And when he delivers one of those to the steamship company he is entitled to the delivery of the goods?

The Witness: Yes.

The Court: That is in the custom of the trade?

The Witness: Yes. [1275]

* * *

Q. Now on Exhibit No. 39, which I presume you remember, there was a charge of \$750 which you stated was owing. Now is that owing to you personally or to Mattoon & Company?

A. To Mattoon & Company.

Q. Has that ever been paid? A. No.

Q. And that charge was made sometime in 1946, I believe? A. That is right.

(Testimony of James E. Sweeney.)

Q. Who is the \$750 owing to?

A. Mattoon & Company.

Q. Yes, but I mean who made the [1276] charges?

A. Mattoon, and it was set up by me.

Q. But Mattoon owes that \$750, they haven't paid it yet, have they?

A. Mattoon doesn't owe it to anybody.

Q. How was the \$750 made up? What items go into it? As I understand it, it was for extraordinary services.

A. That is correct.

Q. Did you ever send Mr. Londono a bill for \$750?

A. I believe he was invoiced for it.

Q. You believe you did?

A. Yes.

Q. Has he paid it?

A. No.

Q. Have you asked him to pay it?

Mr. Bunn: You mean personally and orally?

Mr. Dasteel: Either by letter or from Mattoon & Company.

The Court: He said he was invoiced. Is that not a request? If it is not, I have been making a mistake a lot of times in paying bills.

Mr. Dasteel: Lots of bills are sent and many are unpaid.

Q. Were any efforts made by Mattoon & Company other than sending the invoice to Londono to effect a collection of that bill?

A. No. [1277]

* * *

The Court: You are engaged in business for yourself now?

(Testimony of James E. Sweeney.)

The Witness: Yes.

The Court: And you are a competitor of Mattoon & Company?

The Witness: That is right.

Q. (By Mr. Dasteel): Under what name are you operating now?

A. Best Forwarding Service.

Q. Mattoon & Company is still in business?

A. Yes.

Q. And I believe you just answered his Honor by saying that they are competitors of yours, is that correct?

A. That is right. [1278]

* * *

Q. During the time that Mattoon & Company were representing [1281] Mr. Londono in the handling and the shipment of the barbed wire that is in controversy here, there was some wire at the Moore-McCormack dock and there was some at Pier A at Long Beach, was there not?

Mr. Bunn: I object to the question because you said during the time. Do you mean a certain portion of the time?

The Court: You mean at one time or another?

Mr. Dasteel: At one time or another.

The Witness: Yes.

Q. (By Mr. Dasteel): Now was the responsibility of the safety as to quantity of this wire yours?

A. No.

Q. During the time that you were given instructions by Mr. Londono for shipping?

A. No.

Q. Whose responsibility was it, do you know?

(Testimony of James E. Sweeney.)

A. Yes. The steamship company or the dock operator where the wire rested.

Q. When you first requested the removal of wire from the Long Beach pier, what document, if any, showing your authority to take delivery of this wire did you offer or give to the Matson Navigation Company, or whoever had the wire in charge?

A. I didn't give them any document except we held that [1282] paid receipted freight bill which they would accept as the release, although we could not surrender it to them, and it was also understood that Dulien Steel was to give them a letter authorizing the release of the wire to Londono or to his order.

Q. In other words, you took delivery of some wire on July 30th without any document whatsoever being given to either the Matson Navigation Company or the Marine Transportation Company?

The Court: Document being given by Mattoon to them?

The Witness: Yes, that is right.

Q. (By Mr. Dasteel): Is that the custom of the trade?

A. Yes, Matson was satisfied by our verbal advice that those arrangements were in order and they had already made arrangements to have the matter confirmed in writing.

The Court: With Dulien?

The Witness: Yes.

Q. (By Mr. Dasteel): Now you employed the M & M Transfer Company to take a physical de-

(Testimony of James E. Sweeney.)

livery of the wire from Pier A at Long Beach to Moore-McCormack dock, did you not?

A. Yes, that is right.

Q. Now when the M & M Transfer Company man arrived on the scene and said, "I want to pick up some wire," what did [1283] he have to show, did you know?

A. There was already in Matson's hands the delivery order instructing them to release it to M & M.

Q. The delivery order? A. Yes.

Q. Who issued the delivery order?

A. Mattoon.

Q. Is that in evidence? A. Yes. [1284]

* * *

Q. Anyway, you referred to a release by either the Matson Navigation Company or the Transmarine Company. Which did you refer to, the release of the wire by Matson or by the Transmarine Company?

A. The release by Matson because they—Transmarine was the dock agent for Matson and actually Transmarine Company could be considered to be Matson under those conditions.

Q. Transmarine was just an agent of Matson?

A. That is right.

Q. Now what kind of a release is it? Is it a document or is it verbal?

A. Well, in this case the release included possession of the receipted paid freight bill and the written authorization by Dulien Steel. But in the ab-

(Testimony of James E. Sweeney.)

sence of immediate written authorization the verbal instructions were accepted because [1285] Matson knew Dulien, Matson knew Mattoon, and there was no reason for them to hold up matters awaiting written authorization.

Q. Is it a custom of the trade then to release shipments over the telephone and by word of mouth without the presentation of any particular documents between the shipping company and the customhouse broker like Mattoon & Company?

A. Yes, if they are known and established, and also direct consignees. [1286]

* * *

The Court: Let me reframe the question.

If I understand your testimony, you had a receipted paid freight bill in connection with these goods. There was delivered to Matson an instruction from Dulien in connection with these goods?

The Witness: Yes.

The Court: Was that in accordance with the custom of the trade, to secure delivery of goods shipped by boat without the surrender of the bill of lading? [1287]

* * *

The Witness: Well, I will have to explain it without answering you directly. The bill of lading had to be surrendered and the freight paid at the same time.

The Court: That is, in the custom of the trade?

The Witness: Yes. And then the steamship

(Testimony of James E. Sweeney.)

company takes the freight money and the bill of lading and turns over to the consignee the paid receipted freight bill.

In this case the transaction was a little out of the ordinary because the transmittal of the merchandise was made through steamship channels and that was the reason for the necessity of the letter from Du-lieu to Matson authorizing the release to Londono.

The Court: You mean because there was an absence of a bill of lading?

The Witness: Absence of a bill of lading.

The Court: In the possession of Londono?

The Witness: Yes.

* * *

The Court: May I ask one more question and then you can have the whole series of them read. [1288]

You have testified that you did not receive the bill of lading.

The Witness: Yes.

The Court: And accordingly did not surrender it to anybody?

The Witness: Yes.

The Court: Did you conduct all your transactions on the assumption that the bill of lading had been surrendered to Matson?

The Witness: Yes. [1289]

* * *

The Court: When I said "in the possession of Londono," or your company acting for Londono?

(Testimony of James E. Sweeney.)

The Witness: Yes.

* * *

The Court: Just a moment now. While I am on this subject I want to get the custom of the trade straightened out.

According to your testimony, the custom of the trade is to present the bill of lading, pay the freight, get a receipted [1290] freight bill?

The Witness: Yes.

The Court: Then the custody of that freight bill entitles the person having it to get the merchandise wherever it is?

The Witness: Yes.

The Court: So that you present the freight bill to the boat, or whoever is in immediate charge of the boat, or the dock?

The Witness: Yes. That would have to be supported by authorization from the——

The Court: Consignee?

The Witness: ——consignee, as was done in this case.

The Court: I see.

Mr. John Morrow: Again your Honor is speaking only in so far as Matson is concerned?

The Court: Surely, the custom of the [1291] trade.

* * *

The Court: When is a release effected, when the document is handed to the company or when the fellow gets his goods?

(Testimony of James E. Sweeney.)

The Witness: It is simultaneous. You hand the document and you pick up the merchandise.

The Court: Of course you hand him one document and you get 30,000 bales of wire. That cannot be simultaneous.

Mr. Dasteel: That is what I am getting at.

The Witness: The handing of the release is the first part. The steamship company takes it and then you pick up the merchandise, whether it is one package or 30,000.

Q. (By Mr. Dasteel): Now you get a release or you give a release to the steamship company for, say, 5000 rolls of wire on a Monday. It takes three or four days to pick that wire up from the dock and move it.

Mr. Bunn: Three or four months.

Mr. Dasteel: Any time. [1292]

* * *

Q. (By Mr. Dasteel): Is it the custom in the trade that the minute it is released, regardless of the time it takes to remove it from the dock, that it is the buyer's or the owner's responsibility and liability after the date of the release, is that true?

The Court: What is the date of the release?

Mr. Dasteel: Any time. I am asking the custom of the trade.

The Court: He presents a document to the steamship company and he doesn't complete his delivery until Thursday and somebody steals the wire in the meantime, what is the custom of the trade? Is that your question?

(Testimony of James E. Sweeney.)

Mr. Dasteel: Who is responsible, and whose liability is it, is the steamship company still liable or is the owner of [1293] the wire liable?

The Witness: For the portion that remains on the dock that is not picked up, it is still the responsibility of the steamship company or the dock agent.

* * *

Q. Now referring again to the wire, both at the Moore-McCormack dock at any time and the wire at Pier A at any time that was purchased by Londono, did you for Mattoon & Company, or did you know whether Londono engaged a watchman to watch the wire to see that none was stolen at any time? A. No.

Q. Do you know what became of the quantity of wire that you testified to was on the Moore-McCormack dock at Wilmington that was very bad, whether it was a small portion or a large portion or some portion that was very bad? Was that replaced on the truck and taken back to Long Beach or was it dumped in the ocean?

A. That was the portion that was shipped on April 21, 1947. [1294]

* * *

Q. Now in connection with the wire that was shipped to South America on the various boats, the Mormacreed, the West Wind, I believe, that was not segregated as to galvanized and black, I believe that was your testimony?

(Testimony of James E. Sweeney.)

A. I believe an attempt was made on the Look-out, which was that Grace Line ship. I think it is listed on the ladings as black and galvanized. I am not sure.

Q. But on the other shipments they were not?

A. I don't recall.

Q. I think you testified to that on cross-examination of Mr. Diether.

A. I don't believe they were.

The Court: He says he doesn't believe they were.

Q. (By Mr. Dasteel): However, there was some galvanized and some black? A. Yes.

Q. On the shipments other than the one you have testified to that some effort was made to segregate them? A. Yes.

Q. Now you stated that you were with Mr. Bunn when the [1295] selection of the four rolls of barbed wire known as Exhibits 51, 52, 53 and 54 were made? A. Yes.

Q. Who else was present on that occasion?

A. The only other person I recall is Mr. Londono.

Q. Approximately how many rolls of wire were at the location at which these four rolls were selected, approximately, or can you give it to us in tons? A. Well——(pause)

The Court: Were there several hundred or several thousand?

The Witness: There must have been a thousand, 1500 tons, spread all over the dock.

(Testimony of James E. Sweeney.)

Q. (By Mr. Dasteel): And just how did Mr. Bunn select them? Did he point this one out and did he point that one out? Will you tell us, please, the method he used in selecting them?

A. Well, he had one of the laborers that was there and he picked them out at random.

Q. I don't mean the laborers that handled it. I mean how did Mr. Bunn select it? Did he point to them and tell the laborers to pick that one out?

A. Yes, that is right, at random.

Q. How much time was spent in that selection of that particular wire? [1296]

A. I have no way of knowing; 15, 20 minutes.

Q. Was there any discussion by and between Mr. Londono and Mr. Bunn as to which particular roll to select?

A. No. The fact is, Mr. Bunn selected them independently.

Q. In other words, Mr. Bunn monopolized that particular operation, did he? A. Yes.

Q. Going back to that \$750 that we talked about and that Mattoon billed Londono for and that hasn't been paid yet, is any part of that \$750 coming to you personally? A. No part.

Q. Did you work on a salary or a commission from Mattoon & Company? A. A salary.

Q. No commission at all? A. No. [1297]

* * *

(Testimony of James E. Sweeney.)

Cross-Examination

By Mr. John Morrow:

Q. Mr. Sweeney, in handling the wire transaction for Mattoon and Company and for Mr. Londono, you had some dealings with the Transmarine Navigation Company, did you not? A. Yes.

Q. And also with Marine Terminals Corporation? A. Yes.

Q. And Mattoon & Company received various invoices from Transmarine Navigation Company for services performed by that company?

A. Yes.

Q. Some of those invoices at least are in the Mattoon file, which is an exhibit for identification in this case? A. Yes.

Q. Did you or did you not, that is, Mattoon & Company, receive invoices or statements from Marine Terminals Corporation for services performed by that company? A. Yes.

Q. And are those invoices likewise in the Mattoon file? A. Yes. [1298]

Q. You knew at that time, did you not, that Transmarine Navigation Company were the terminal operator of Pier A at Long Beach?

A. Yes.

Q. Transmarine Navigation Company had control of the dock and was operating as a terminal operator for the United States Government?

(Testimony of James E. Sweeney.)

The Witness: Yes.

Q. (By Mr. John Morrow): Your answer is that that was your understanding of the situation at the time you had these dealings? A. Yes.

Q. That Transmarine Navigation Company was in control and operating Pier 3-A at the time the White Squall was unloaded at Long Beach?

A. Yes. [1299]

* * *

The Court: The question again is, did he know that they were operating it?

Mr. John Morrow: Yes.

* * *

Mr. John Morrow: Yes, I will amend my question to include, according to your information at that time.

The Witness: Yes. [1300]

Q. (By Mr. John Morrow): According to your information at that time, that is, when the White Squall was being unloaded at Pier A at Long Beach, Marine Terminals Corporation performed the stevedoring services in unloading the White Squall? A. Yes.

Q. What was the nature of the services for which Transmarine Navigation Company billed Mattoon & Company?

Mr. Diether: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled. Do you wish to look at your memo?

(Testimony of James E. Sweeney.)

The Witness: I know without looking. It had to do with the payment of what is known as over-time checkers.

In other words, if they loaded the freight after regular hours, after 5:00 o'clock, it was up to whoever had issued the orders to pay those additional wages, and that is, I believe, in Exhibit 39.

Q. (By Mr. John Morrow): In other words, that was for labor in unloading the wire from the ship?

A. Yes.

The Court: Labor for unloading?

Mr. John Morrow: For unloading the wire.

The Court: I thought you were talking about Transmarine [1301] instead of Marine Terminals.

Mr. John Morrow: I understood the witness to say for labor for unloading.

The Court: I thought he said for loading.

The Witness: It would be for loading.

The Court: For loading off the dock onto the trucks or cars?

The Witness: Yes.

The Court: That is what I understood his testimony and your question to be.

Q. (By Mr. John Morrow): That is for Transmarine?

A. Yes.

Q. Do you recall what the nature of the services were which were billed by Marine Terminals Corporation?

A. Yes, for rail car loading and segregation.

Q. Of the wire in question?

A. Of the wire, yes.

(Testimony of James E. Sweeney.)

Q. You had no personal knowledge of any kind as to whether or not Transmarine Navigation Company was the agent for Matson?

The Court: You never saw their contracts?

The Witness: No.

Q. (By Mr. John Morrow): Were they so generally regarded in the Harbor [1302] Area by those doing business there? A. Transmarine?

Q. Transmarine.

A. Yes, they were agents, the berth agents, for any steamship company that elected to put their ships into their dock.

Q. Did you mean to say that your understanding was that Transmarine was berth agent?

A. Well, they are a dock operating agent, they had possession of the facilities at Pier A.

Q. In the operation of that particular dock?

A. Yes.

The Court: And the custom of the trade was that any steamship company that chooses to tie up there, they become the agent for them?

The Witness: Yes.

The Court: If there is any agency relationship after it is on the dock?

The Witness: Yes.

The Court: And Marine Terminals there was between the boat and the dock?

The Witness: Marine Terminals was a stevedoring company, did the stevedoring for Transmarine. In other words, they unloaded or loaded the ships.

(Testimony of James E. Sweeney.)

The Court: I see. [1303]

Q. (By Mr. John Morrow): You knew, did you not, that Matson Navigation Company was a berth agent for the government, for the WSA at that time? A. Yes.

* * *

Q. As I understand it, you had a conversation with Mr. Joseph Banning of Matson somewhere around August 15, 1946? A. Yes.

Q. And you discussed with Mr. Banning on that occasion the matter of the alleged stoppage of delivery of wire to Mr. Londono? A. Yes.

Q. That was the subject of your discussion with him? A. Yes.

Q. Mr. Banning told you at that time, did he, that [1304] he was acting, that is, that Matson was acting—strike the “acting”—was a War Shipping Administration operator in the transaction?

A. Yes.

Q. And that Matson was acting under orders of the War Shipping Administration? A. Yes.

Q. Mr. Banning also told you at that time, did he not, that the War Shipping Administration had instructed Matson Navigation Company to stop deliveries of wire to Mr. Londono? A. Yes.

Q. He also advised you at that time to call Mr. Ball, the attorney for the War Shipping Administration, in San Francisco? A. Yes.

Q. And thereafter you did call Mr. Ball, as you have testified in your direct examination?

A. Yes.

(Testimony of James E. Sweeney.)

Q. As I understand it, Mr. Sweeney, you visited the Wilmington office of Matson some time late in August, 1946? A. Yes.

Q. And at that time did you or Mr. Londono request them, that is, Matson, to search for the original bill of lading? [1305] A. Yes.

Q. And was there some search made for the original bill of lading at that time?

A. As I recall, Mr. Ford was unable to locate it.

Q. Your recollection is that they tried to locate the original bill of lading at that time?

A. Yes.

The Court: When a bill of lading is surrendered, what is the custom in the trade, if you know, for the issuer, or the steamship company, with relation to marking it as being cancelled, surrendered or—you used a term a while ago, I have forgotten.

Mr. Bunn: “Accomplished” was the term he used.

The Court:—accomplished?

* * *

The Witness: The steamship companies I believe keep their records according to ships.

The Court: I am just thinking about the bill of lading now. Do you know what the custom of the trade is to mark on there as to a spent bill of lading?

The Witness: I don't know how they do it within their [1306] own office.

The Court: Have you dealt with Matson Company—do you know what their custom is?

(Testimony of James E. Sweeney.)

The Witness: Well, I would say their custom would be to take the ladings as they are surrendered and attach them to the ship's manifest in order to have a complete record.

* * *

The Court: Do you know the custom of Matson with relation to what they mark on a spent or surrendered bill of lading? [1307]

The Witness: I do up until the time the freight is paid.

The Court: Up until the freight is paid?

The Witness: And including that time.

The Court: What is it?

The Witness: It is to stamp the bill of lading "Paid" and the freight bill "Paid" and initial the freight bill and return it to the consignee and they take in the bill of lading.

The Court: Very well.

Mr. Bunn: By "they," you mean the steamship company?

The Witness: Matson. [1308]

Cross-Examination

* * *

By Mr. Laven: [1309]

* * *

Q. Mr. Sweeney, I believe you testified on cross-examination by Mr. Diether that on the 31st of July, 1946, that you knew that the document which you had taken for a bill of lading was not a bill of lading but was a freight bill.

* * *

(Testimony of James E. Sweeney.)

The Witness: I testified to that, yes.

* * *

Q. (By Mr. Laven): Mr. Sweeney, did you after the 31st [1311] of July, 1946, ever tell Mr. Londono that the document you thought was a bill of lading actually was a freight bill which you received from the bank?

Mr. Bunn: I object to that.

Mr. John Morrow: That is objected to, that there is no testimony that he thought the document was a bill of lading at any time.

Mr. Laven: In his first testimony he said he didn't pay any attention to it.

The Court: I think he did, that he regarded it as a freight bill. [1312]

* * *

The Court: Let us clear it up again.

Did you ever at any time take it for granted or believe that the document delivered to you by the bank was the bill of lading?

The Witness: No.

The Court: And which has since been identified as the freight bill?

The Witness: No.

The Court: You did not?

The Witness: No.

The Court: The objection to the question is sustained. [1313]

(Testimony of James E. Sweeney.)

Did you ever tell Mr. Londono that you did not have a bill of lading?

The Witness: No.

The Court: And that none had ever been delivered to you?

The Witness: No.

The Court: Why did you not do that?

The Witness: It wasn't necessary from the position I occupied to obtain delivery of the merchandise.

The Court: Was it customary in the practice of the trade for the bill of lading to be delivered to the customs broker?

The Witness: In this case it was an impossibility to deliver it, and it couldn't be called a custom.

The Court: Let us not speak of that. Ordinarily in a similar transaction, is it customary to deliver the bill of lading to the customs broker?

The Witness: Yes.

The Court: With the freight bill, the paid freight bill?

The Witness: Well, the freight bill isn't always necessary, but the transaction is not a usual one as far as the consignee getting goods. The only time it would be a custom of the trade, if we were brought an original bill of lading by the bank and placed it in trust. Then we would take that [1314] bill of lading, claim the merchandise from the steamship company, enter it through customs, and then return the customs release to the bank. That

(Testimony of James E. Sweeney.)

would be the mechanics under a normal transaction where a shipper sent it to a direct consignee.

But in this case it was from a shipper to a consignee and then resold to a party who was not indicated as a consignee on the bill of lading.

The Court: And paid for by the bank?

The Witness: Well, assisted by the bank.

The Court: Very well. Proceed.

Q. (By Mr. Laven): Now, Mr. Sweeney, I noticed on some of these documents that you have identified that there is indication of short tons. Will you tell us the weight of short tons as it is known in the shipping business?

A. 2,000 pounds.

Q. What is the weight of a long ton?

A. 2,240.

Q. Was all this wire that was reshipped, shipped on the basis of short tons?

A. My recollection is that it was.

Q. Did you handle any other shipments of barbed wire for Mr. Londono prior to July of 1946?

A. Did we handle other? [1315]

Q. Yes. A. Yes.

* * *

Q. Do you know the custom in the shipping business where the original bill of lading is issued?

A. Where it is issued?

Q. Yes.

A. In the steamship office at the port of departure.

(Testimony of James E. Sweeney.)

Q. You mean in the steamship office?

A. Yes.

Q. It would not be issued on the ship?

A. Under unusual circumstances, possibly, but no other time.

Q. Ordinarily the bill of lading is issued in relation to what time that cargo is delivered to the vessel?

A. Prior.

Q. Prior to its loading? A. Yes. [1316]

* * *

Q. Mr. Sweeney, do you have any knowledge, by reason of handling this cargo for Mr. Londono, as to where the bill of lading was issued?

A. It would have been issued in Honolulu: [1317]

* * *

The Court: Same ruling.

Do you know whether or not the custom of the trade is any different in Honolulu?

The Witness: No, I don't.

* * *

Q. (By Mr. Laven): Mr. Sweeney, I believe you testified that some of the rolls of wire had some mud on them? A. Yes.

Q. Can you tell us your recollection of the color of the mud that was on that wire?

A. Well, in most cases it was rust stained.

The Court: No, the mud. Was the mud reddish colored or clay colored, or what?

The Witness: Rust colored.

(Testimony of James E. Sweeney.)

Q. (By Mr Laven): The mud was rust colored?
A. Yes.

* * *

Q. Mr. Sweeney, was there more than one color of mud on the wire?

A. Well, it would be various shades, I am sure.

Q. Mr. Sweeney, would you kindly look at these samples over here, these exhibits for identification?

A. Yes.

Q. I call your attention particularly to No. 53 for identification, and I point out to you on the bottom of one of the rolls where there are some heavy encrusted materials, and ask you to look at that and say if that was the appearance [1320] which you say the mud that you saw on the wire was at the dock.

A. (Examining exhibit): Well, the appearance now is nowhere near the same as then because that roll was damp at the time it was picked up and in four years it has dried out so that it is a different shade of mud.

Q. Now you say it was damp. Do you know whether it was oil or water on the mud at that time?

A. On this roll?

Q. No, on the rolls that you saw at the dock.

A. Well, it could have been either or both.

* * *

Q. When you say that it had a damp appearance, will you explain that, describe it?

A. It was damp, it had been picked up damp, I

(Testimony of James E. Sweeney.)

assume, and had gone into the ship and came out of the ship damp.

Q. Would you say there was any difference in appearance of the rust which you saw on the wire and the color of the heavy particles which I have pointed out to you on Exhibit 53 for identification? [1321]

A. Well, there would be a variation in shade again. Rust looks different on wire than when mixed with mud.

* * *

Q. Mr. Sweeney, I call your attention to Exhibit 52 for identification and ask you—let me go back one question.

You stated in your cross-examination, I believe, by Mr. Diether, that the wire was obviously rusty. Now I call your attention to Exhibit 52 for identification and call your attention to the side of this particular roll and ask you to tell us whether or not—tell us how the bottom of this roll compares in color, and appearance, with the rust which you stated you saw on the wire at the dock.

The Court: That has been asked and answered.

Mr. Laven: Not as to this roll, your Honor.

The Court: This roll?

Mr. Laven: Yes, No. 53 for identification.

The Court: Very well.

The Witness: The only difference is that this roll, the shades have been changed because it is dry and the great majority of that mud on the encrusted wire at the dock was still damp.

(Testimony of James E. Sweeney.)

Q. (By Mr. Laven): Then was the wire that you saw on the dock and which you say appeared to you to be rusty, was it darker in appearance than Exhibit 52 for identification?

A. Well, if moisture would make it a darker shade, it would be.

Q. And is that the same so far as Exhibit 53 for identification is concerned? A. Yes.

Q. Did you ever give any instructions to Transmarine or Matson Navigation Company to select the best wire on behalf of Mr. Londono in accepting delivery of the barbed wire under LA, Bill of Lading 29? A. No.

Q. Or M & M Transfer?

A. M & M Transfer, yes.

Q. What instructions did you give them relative to [1323] the selection of the wire?

A. To segregate the best that they could pull out of the lot.

Q. And did you give them any description or instructions relative to what you meant by the word "best"?

Mr. Bunn: You mean orally, Mr. Laven?

Mr. Laven: Let me ask the question to find out.

Mr. Bunn: I object to the question as indefinite and uncertain.

The Court: Objection sustained.

Did you give M & M instructions in writing?

The Witness: Yes.

The Court: Are they in these files?

(Testimony of James E. Sweeney.)

The Witness: Yes. I don't know that the segregation instructions are in writing.

The Court: Your recollection is that you gave them orally?

The Witness: Yes.

The Court: Very well.

Q. (By Mr. Laven): What were those instructions that you gave them relative to selecting the best wire?

A. The instructions as to the appearance of the wire made it necessary to get it separated as best as possible.

Q. What standard or what quality did you tell them, [1324] or basis to use, for the selection of this wire?

Mr. Bunn: I object to the question as calling for a conclusion, uncertain, indefinite. "Best" means best.

Mr. Laven: That may have a long variation between them.

The Court: Objection overruled.

The Witness: I told them to take out the best possible rolls they could see in the wire that was discharged.

Q. (By Mr. Laven): You left the selection of the best up to their judgment without any further description as to the word "best"?

The Court: Did you mention the word "rust" or "rusty wire"?

The Witness: Well, pull out wire with as little rust as possible on it, and we employed one man

(Testimony of James E. Sweeney.)

from Koppel Bros. to supervise the segregation. In other words, if he saw the laborers being a little lazy in pulling out the better rolls, he was to point out that they were to separate more finely or definitely.

The Court: That is the only instructions that you gave to M & M Transfer?

The Witness: Yes.

Q. (By Mr. Laven): Now, Mr. Sweeney, when you went down to the dock— [1325] let's see, I believe that it was the first time that you went down there on the 29th?

A. 28th or 29th.

* * *

Q. When was it that you first talked to any representative of Matson Navigation Company relative to this wire?

* * *

The Witness: I called them some time perhaps a week or 10 days before the arrival of the ship to determine when she [1326] was coming in and where they were going to berth her.

* * *

Q. When was the next time you talked to someone connected with Matson?

A. I can't specifically recall.

Q. Was it the time you talked to Mr. Banning around August 15th?

A. No, we will say the next time of any importance was the first time I went there and went aboard the ship and also went into the dock office.

(Testimony of James E. Sweeney.)

The Court: That was about when?

The Witness: The 28th or 29th.

Q. (By Mr. Laven): What conversation and with whom did you have it at that time?

A. The gentleman's name I recall is Applegate. He worked, I believe, for Transmarine.

Q. He worked for Transmarine?

A. I believe so. And my purpose was to find out how soon the Dulien portion was going to be discharged so that we could start to take delivery when all the details were cleaned up. [1327]

Q. Now after you saw the wire being discharged, did you have any conversation with anyone connected with Matson or Transmarine?

A. Nothing of importance on the dock that I remember.

Q. Did you have any conversation anywhere else, at the office, either uptown or at Wilmington?

A. No, it had only to do with the details of the release which might have occurred day after day, or two or three times in a day.

Q. Was that the only kind of conversations that you had with Matson between July 28 and August 15, all relative to the release of the cargo?

A. Yes, that is right.

Q. There was no other conversation relative to any other matter between July 28 and August 15, 1946?

A. None that I can remember.

Q. After August 15th or on August 15th, you had a conversation with Mr. Banning, did you not?

A. That is an approximate date.

(Testimony of James E. Sweeney.)

Q. And you have told us the conversation that you had with Mr. Banning? A. Yes.

Q. And that was relative to the selection of the wire? [1328]

A. No, it was relative to the stoppage of the delivery of the wire.

Q. Stoppage of the delivery? A. Yes.

Q. And in that conversation he told you that Gonzalez & Blanco had an order bill of lading and Mr. Londono did not have any bill of lading; is that correct?

A. No, he didn't tell me that. Mr. Ball did.

Q. What did Mr. Banning tell you at that time?

A. Mr. Banning said, in substance, that his hands were tied and he could not take any action, and if I wanted to go beyond him, I would have to talk to the War Shipping Administration.

Q. After that when did you have any further conversation with anyone either connected with Transmarine or Matson Navigation Company?

* * *

The Witness: Any further conversations I may have had with Matson had to do with the resumption of delivery.

The Court: Except the conference you testified about with Mr. Ford? [1329]

The Witness: Right.

The Court: When you went down there in the latter part of August?

The Witness: Yes.

* * *

(Testimony of James E. Sweeney.)

Q. (By Mr. Laven): Now, Mr. Sweeney, was Mr. Londono with you on all of these occasions?

A. No.

Q. On what occasions was Mr. Londono with you?

A. It is hard to say. For instance, the call to San Francisco and Mr. Banning, he was not in the office then. When I first went to the dock I did it because we had to get things started and I don't recall that he was along at that time. I believe those are the two important times. [1330]

* * *

Mr. Diether: Your Honor, I have this invoice now of Transmarine for that demurrage and I would like the opportunity to just ask the witness a few questions about it.

The Court: Is it marked for identification?

Mr. Diether: No, it is not, your Honor.

The Court: We will mark it for identification.

Mr. Diether: The original is marked Paid and is from [1331] the bank's file and the carbon copy is from the Transmarine file.

The Court: That will be C-X. Are there two documents?

Mr. Diether: Yes.

The Court: Copies?

Mr. Diether: One original and one copy.

The Court: C-X and C-X1.

(The documents referred to were marked Defendants' Exhibits C-X and C-X1 for identification.)

(Testimony of James E. Sweeney.)

Cross-Examination

By Mr. Diether:

Q. I show you Defendants' Exhibits C-X and C-X1 for identification and ask you if that is the invoice showing the detail of the item of \$2,837.45?

A. Yes.

Q. Which you have listed on Plaintiff's Exhibit 39?

A. Yes.

Q. Was that received by Mattoon & Company on or about the date that those bills are dated?

A. Yes.

Q. That is, November 26, 1946?

A. Yes.

Q. Do you know if this bill for demurrage covers all of the wire which is included on bill of lading, LA-29?

A. No. [1332]

Mr. Bunn: Just a minute, please.

The Court: He said no.

Q. (By Mr. Diether): That is, that you do not know?

A. I know that it does not cover all of the wire on bill of lading, LA-29.

Q. How do you know that?

A. Because it calls for 894 tons and the bill of lading on LA-29 was for approximately 2,300 tons.

Q. Do you know whether that bill covers only the 2,000 tons which Mr. Londono was entitled to or any portion of the 2,000 tons?

A. It covers a portion of it.

Q. Does it cover any of the 300 tons to which Dulien was entitled?

(Testimony of James E. Sweeney.)

The Court: How would he know?

Mr. Diether: He says he checked these.

The Court: It is 800 some odd tons, but how does he know that it covers 300 tons to which Dulien was entitled?

Mr. Diether: That is the point I want to bring out.

The Witness: No, it doesn't show because the 300 to Dulien, if they had been picked up, he would have been billed the demurrage for them separately.

The Court: If he had picked them up?

The Witness: Yes. [1333]

Q. (By Mr. Diether): When does the demurrage start on the 894 tons?

A. It doesn't give the starting date—excuse me—no, it doesn't give the starting date.

Q. Do you know the date the demurrage started?

A. No, I don't.

Q. Do you know any other details about that demurrage other than shown on that shipment?

A. No, I don't.

Mr. Hubert Morrow: Is that the invoice of Transmarine?

Mr. Diether: It is.

I will ask that that be marked as Defendant Bank's next exhibit.

The Court: Admitted as C-X and C-X1.

(The documents referred to were received in evidence and marked Defendants' Exhibit C-X and C-X1.)

(Testimony of James E. Sweeney.)

Cross-Examination

By Mr. Laven:

Q. Mr. Sweeney, at any time from the 29th of July, 1946, until the entire cargo of wire was unloaded from the White Squall, did you notice whether or not there were any identifying marks on each roll of wire indicating that it was [1334] Gonzalez & Blanco or Dulien Steel? A. No.

* * *

Redirect Examination

By Mr. Bunn:

Q. Mr. Sweeney, you testified yesterday that you believed it was Mr. Londono's intention to segregate between galvanized and black before the wire got here; I mean it was his intention before the wire got here, that when the wire got here he would separate between the galvanized and the black. Did he ever tell you that? A. Yes.

Q. Do you know when? A. No.

Q. Did he tell you whether he intended to have that segregation made in Los Angeles County or after the wire got to Colombia? A. No.

Q. You testified yesterday I believe that you said that you did not deliver any documents to Matson Navigation Company at all after the delivery of the delivery order of July 31, 1946? [1335]

* * *

The Witness: It says on there Matson acknowledged receipt on July 31.

The Court: July 31?

(Testimony of James E. Sweeney.)

The Witness: Yes, in pencil.

Q. (By Mr. Bunn): When you said yesterday that you did not after that time deliver any documents to Matson, did you or did you not mean to Matson direct as distinguished from any transfer company or transmittal to Matson?

* * *

Q. Do you understand the question?

A. Yes, I understand it. The only documents were delivery orders—— [1337]

* * *

The Court: Now if I may have a moment here.

This is the document about which you testified yesterday, and the original was produced, but I do not remember that number.

Mr. Diether: It is C-U, I think.

Mr. Bunn: Is that the M. and M. delivery order?

Mr. Diether: To Matson.

The Court: Matson Navigation Company released to M. and M. Transfer Company.

You said that that was given on the 31st. There is a notation, "Phoned to Mr. Ford, 10:25 a.m., 7-31." That was your notation?

The Witness: No, that was delivered to Matson's Los Angeles office and this gentleman, whose signature appears here, verbally transmitted it to the Wilmington office.

The Court: And this was delivered to Matson's office when, do you remember, July 29 or July 31?

The Witness: July 31.

(Testimony of James E. Sweeney.)

The Court: What does this number mean in the corner, "Please refer to 2333"?

The Witness: That is the file number that we designated for the transaction. [1338]

The Court: That is your file number?

The Witness: Yes.

* * *

Q. (By Mr. Bunn): Mr. Sweeney, I show you Exhibit C-U, and call your attention to the fact that in the upper left-hand portion near the margin of that document appear two perforation marks. Do you know what caused those perforation marks?

A. Yes.

* * *

Q. What caused them?

A. A duplicate copy of the delivery order.

Q. Was there a custom in Mattoon's office regarding duplicates of delivery orders?

A. We always issued them in duplicate.

Q. Was there a custom about what was done with them immediately upon issuance? Were they fastened together or not?

A. They were always stapled together and then turned over to whoever they were addressed to. [1339]

Q. Have you any further explanation as to the presence of those perforations there and the absence now of any document attached to it?

Mr. Diether: I object to that as already asked and answered.

(Testimony of James E. Sweeney.)

The Court: Overruled.

Have you any further explanation?

The Witness: Yes. We always issued them in duplicate for the use of the truck company or steamship company that they are addressed to so that they can have one copy for additional use in the mechanics of their releasing the freight.

Q. (By Mr. Bunn): When you went to Matson's Wilmington office with Mr. Londono, and Mr. Londono, as you testified, asked to see the original bill of lading on the barbed wire and he was handed a document by Mr. Ford, how far apart were you and Mr. Londono sitting or standing at that time?

A. We were standing alongside one another.

Q. Did you examine these documents then which Mr. Ford handed to Mr. Londono? A. No.

* * *

Do you know of any actual weighing on scales of any of [1340] the rolls of wire in this Dulien shipment?

Mr. Diether: When and at what time?

The Court: At any time.

Mr. Diether: I object to that as incompetent, irrelevant and immaterial, unless it is shown to be weighed at the time it left the dock.

The Court: Overruled.

The Witness: Yes. All the wire that went out on those Exhibits 38-1 through 5 were weighed.

Q. (By Mr. Bunn): In preparation for the shipment to South America?

(Testimony of James E. Sweeney.)

A. Yes. There are scale tickets in the files to support it.

Q. Do you know of the weighing of any of the wire other than that? A. No.

Q. What, if any, custom obtained in Mattoon's office in 1946 regarding the freedom of access of Mattoon's customers to Mattoon's files?

Mr. Diether: That is objected to, what the custom was. He has testified to what the relationship was between Mr. Londono and Mattoon.

The Court: Overruled. The question was opened up on cross-examination by someone.

The Witness: The files of all our customers were open to [1341] the customers. In other words, we needed certain supporting information and had to maintain the files, but if at any time they wanted to view them or pick up some notations or even documents, it was their privilege.

Q. (By Mr. Bunn): Was Mr. Londono given any greater privilege than was usually accorded to Mattoon's customers? A. No.

The Court: Was the custom of Mattoon & Company, if any original documents were taken from any of the files by the customers, to secure a receipt for them or a notation as to the time and the document?

The Witness: If we thought there was sufficient reason, we would.

Q. (By Mr. Bunn): You testified this morning that the first pickup of wire from Pier A for trans-

(Testimony of James E. Sweeney.)

portation thereof to the Moore-McCormack Line was on July 30. Now did you see it done?

A. No.

Q. How do you determine that it was on the 30th?

A. I would have to verify it with the trucking company.

Q. You saw it there on the 31st? A. Yes.

Q. Is that the reason you think it was done on the 30th? [1342]

A. That is the reason I thought it was started on the 30th.

Q. In other words, your statement this morning that it was done on the 30th was a conclusion from the fact that you saw the wire on the dock at Moore-McCormack on the 31st?

Mr. Diether: I object to that as leading and suggestive, and calling for a conclusion.

The Court: Overruled. Let us get on.

The Witness: The answer is yes.

* * *

Q. (By Mr. Bunn): You said this morning, I believe, that there were no other persons present at the selection by Mr. Londono's counsel, Mr. Bunn, of the four rolls of wire which are in the courtroom. Do you mean that there were no other people on the dock? A. No, I don't.

Q. What did you mean?

A. I mean that no one else was closely interested.

Q. Were any of Koppel's men there at [1343] the time? A. I don't know.

(Testimony of James E. Sweeney.)

Q. There were people, though, weren't there?

A. Yes

Q. Did the Southern Pacific Company bill Mattoon for cash advances made to or by Transmarine or Marine Terminals?

Mr. Diether: What is the materiality of that?

Mr. Bunn: This morning he was asked about the payment by Mattoon & Company of special expenses for which Mattoon was billed by——

The Court: Transmarine.

Mr. Bunn: ——Transmarine. Now I want to know whether anybody else besides Transmarine billed Mattoon for disbursements made to Transmarine or Marine Terminals by such other parties, such as the Southern Pacific Railroad?

The Witness: Yes, the Southern Pacific did.

The Court: The supporting documents are in the file?

The Witness: Yes.

Q. (By Mr. Bunn): You said a while ago, in answer to a question—you were asked if you ever told Mr. Londono that you had not received a bill of lading—and you answered in the negative, that you had never told him that. Does that mean that you changed your testimony of the other day as to what you told him when he came and asked you if this document was a bill of lading and handed you the freight bill? [1344]

* * *

The Witness: Well, my interpretation, I had that in mind when I answered it.

The Court: I asked you the question this morn-

(Testimony of James E. Sweeney.)

ing whether or not you had ever told him that you did not have a bill of lading.

The Witness: I am explaining. That was my interpretation because he came to me at this particular time with the freight bill and said, "Is this a bill of lading?" and I said "No."

The Court: At that time did you state to him whether or not you had ever received a bill of lading? Did he ask you if you had a bill of lading?

The Witness: I don't recall that he asked me. I merely said, "That is the only document I have ever received to cover the merchandise."

The Court: Very well.

Mr. Hubert Morrow: Your Honor's question this morning was why.

The Court: I asked him both, if he ever did and why he did not. [1345]

Q. (By Mr. Bunn): You stated a while ago, as I remember, that according to the custom of the trade, bills of lading are issued prior to the loading on the ship. What, then, is the meaning of the language "on-board" bill of lading?

Mr. Diether: That is objected to as immaterial. It hasn't any bearing on any issue involved in this case.

The Court: Overruled.

The Witness: The "on-board" endorsement means that the merchandise is on the ship and is so signed for by the steamship company.

Q. (By Mr. Bunn): Then "on-board" bills of

(Testimony of James E. Sweeney.)

loading are issued before the merchandise is actually on board?

A. No, that is the purpose of it.

Q. In other words, they are issued afterwards?

A. They are issued after the merchandise is loaded on board.

Q. And they make a representation that it is on there; is that what that means? A. Yes.

Q. Mr. Sweeney, when these rolls of wire that are in the courtroom now, Exhibits 51, 52, 53, and 54, were selected on the dock, was there any more or any less or any different quantity of rust on any of them—I mean of mud on any one [1346] of them—from what now appears thereon?

A. There was more.

Q. What movements have those rolls of wire to your personal knowledge been put through in the actual moving of them from Koppel's place to this courtroom?

The Court: That has been asked and answered. They were moved off and on the truck a couple of times, I suppose, and if mud was on there three or four years ago it has dried by now. [1347]

* * *

May 3, 1950

RUSSELL H. MATHER

called as a witness by and on behalf of the plaintiff,
having been first duly sworn, was examined and
testified as follows:

* * *

Direct Examination

By Mr. Bunn:

* * *

Q. What is your business, Mr. Mather?

A. Manager of Gonzalez & Blanco, importers
and exporters.

Q. Were you so engaged in 1946, in July and
August? [1350] A. Yes.

Q. And have you at all times since then been so
engaged? A. Yes.

Q. Mr. Mather, were you with Gonzalez & Blanco
throughout the entire year, including the first six
months also of the year 1946? A. Yes.

Q. Did you go to Honolulu in 1946?

A. Yes. [1351]

* * *

Q. Mr. Mather, did you—answer yes or no to
this—conduct any negotiations on behalf of Gon-
zalez & Blanco in Honolulu with Dulien Steel

(Testimony of Russell H. Mather.)

Products of California, Inc., or Dulien Steel Products, Inc., for the purchase of barbed wire by Gonzalez & Blanco? [1352]

* * *

Mr. Bunn: Did the witness answer the question?

The Witness: Yes.

Mr. Bunn: The answer to the question was?

The Witness: Yes.

The Court: He answered yes.

Q. (By Mr. Bunn): With whom did you conduct those negotiations in Honolulu? [1353]

A. A Mr. Hofius.

Q. Mr. Lacy Hofius? A. Yes.

Q. Do you remember when you were in Honolulu in early 1946?

A. The latter part of May and first of June.

Q. Did you ascertain then what position, if any, Mr. Lacy Hofius occupied for Dulien?

* * *

Mr. Dasteel: We stipulate that he represented Dulien, but this witness has no way of knowing what particular [1354] capacity he had.

* * *

Mr. Bunn: That makes my question unnecessary.

The Court: Very well.

Q. (By Mr. Bunn): Mr. Mather, were you shown any barbed wire in Honolulu? A. Yes.

Q. By whom were you shown it?

A. Mr. Hofius.

Q. And where was the barbed wire?

(Testimony of Russell H. Mather.)

A. In three different locations.

Q. Do you remember what they were?

* * *

The Witness: They were located at what I remember to be the Marine Corps Base, Camp Schofield, and another location that was connected with the War Assets Administration Yard, or something, over by Pearl Harbor. I don't recall the name.

The Court: The Marine Corps Base and Camp what?

The Witness: Schofield. [1355]

The Court: And another?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Calling your attention, Mr. Mather, to the wire which you saw at Camp Schofield, or Schofield Barracks I think it is called, will you tell us whether or not there appeared to be made any segregations of different kinds of wire in that which you saw? A. At Schofield?

Q. Yes, at Schofield Barracks?

A. They had done some work in palletizing and the wire that was palletized that I saw was good wire.

Q. Was it black wire or galvanized wire?

A. It was black.

Q. When you say "palletizing" you mean placing on pallets? A. That is right.

The Court: What is a pallet, a platform?

The Witness: A wooden platform.

Q. (By Mr. Bunn): Were the pallets uniform in size? A. Yes, sir.

(Testimony of Russell H. Mather.)

Q. What was the size, approximately?

A. They hold 20 coils.

Q. Piled in what manner? [1356]

A. Stacked.

Q. Do you remember how many in each tier?

A. No, I don't.

Q. But 20 coils? A. Yes, sir.

Q. Of coils weighing how much?

A. A hundred pounds.

The Court: Is that a hundred-pound coil over there, or a 28-pound coil?

The Witness: They look to me to be hundred-pound coils.

The Court: Approximately?

The Witness: Yes.

The Court: How were they stacked, like doughnuts?

The Witness: One on top of the other.

The Court: I mean on the side, this way or this way (illustrating)?

The Witness: On the side.

* * *

Q. (By Mr. Bunn): Do you remember the occasion of your first observation of wire at Schofield Barracks? [1357] A. Yes.

The Court: How did you happen to go to Schofield Barracks?

The Witness: After discussion with Mr. Hofius.

The Court: Did he take you out there?

The Witness: He did.

(Testimony of Russell H. Mather.)

The Court: Did he drive you out there in a car?

The Witness: Yes, sir.

The Court: What did you see when you got there?

The Witness: Barbed wire.

The Court: How much?

The Witness: (Pause.)

The Court: Thousands of coils?

The Witness: Oh, yes. I would guess, and it would be merely a guess, between 2,000 and 2,500 tons.

The Court: Some stacked on pallets?

The Witness: Some stacked and some in piles.

The Court: How much of it was galvanized and how much was not galvanized?

The Witness: 99 per cent of it was not.

The Court: Was not?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Did you observe the condition of the portion which was not palletized? [1358]

A. Yes, sir.

Q. What did you observe in that regard?

The Court: I do not understand what he is talking about. Was it all palletized?

Mr. Bunn: No, sir. He has already testified that a small portion of it was palletized.

The Court: The galvanized wire was palletized?

Mr. Bunn: No, sir. He said a small portion of the wire was palletized and that was black wire that was palletized.

Q. Am I correct, Mr. Mather?

(Testimony of Russell H. Mather.)

A. Yes, sir.

* * *

Q. What did you observe as to the condition of the wire at Schofield Barracks which you there saw was not palletized? [1359]

A. Good, bad and poor.

Q. Was it segregated as to being galvanized or black? A. No, sir.

Q. And the only segregation was that which was on the pallets, is that right?

A. That is right.

Mr. Diether: Will you answer audibly so we can hear you?

The Witness: That is right.

Q. (By Mr. Bunn): What did you observe about the wire which you have just denominated bad and poor? What was it which you observed which caused you to say it was bad and poor?

A. Some of the coils were covered with mud and some of them were extremely rusty.

The Court: What was good?

The Witness: They had evidently been dumped in the mud and it had rained on them.

The Court: The good?

The Witness: The good.

The Court: You said good, bad and poor.

The Witness: It was all mixed up together.

The Court: But what was good wire?

The Witness: The black wire was in excellent shape. There was no mud, no rust, clean.

The Court: And the bad was? [1360]

(Testimony of Russell H. Mather.)

The Witness: Muddy and rusty.

The Court: And the poor?

The Witness: Falling apart.

Q. (By Mr. Bunn): And the portion which you say was good was 1 per cent approximately, in your opinion, of the total?

Mr. Dasteel: Just a moment. He never said anything of the kind.

Mr. Bunn: He said the other was 99 per cent.

Mr. Laven: Not galvanized.

Mr. Bunn: He said the other was 99 per cent. All right.

Q. What did you say, Mr. Mather?

A. 99 per cent of it was black.

Q. What was the condition of the barbed wire which you observed at the Marine Base?

A. Good.

Q. Was it black or galvanized?

A. Mostly galvanized.

Q. Was it on pallets or not?

A. On pallets.

The Court: Excuse me, counsel.

The witness up to this moment has used good, bad and poor. We have four coils of wire in the room here. Will you step over to them a moment, please. Perhaps I can get some [1361] notion of what you are talking about.

It has been testified, Mr. Mather, that these four rolls of wire were taken at random from the shipment delivered on the dock consigned to Dulien Steel at Pier A at Long Beach. No. 51 is on the

(Testimony of Russell H. Mather.)

right, Exhibit 52 is the next one, 53 is the next one and 54 is on the left, the black one.

Now can you indicate by pointing to any one of those exhibits what you mean, or do they exemplify what you mean by good, bad and poor?

The Witness: No. 51 and 54 I would say are good rolls.

The Court: And which is bad and which is poor?

The Witness: The remaining two rolls—52 is a bad roll.

The Court: That is 52?

The Witness: Yes.

The Court: Yes?

The Witness: 53 is a bad roll.

I might add I would like to say that there was much wire there in far worse condition than these two rolls.

Mr. Bunn: Meaning 52 and 53?

The Witness: When I say "poor" I mean to me absolutely unusable.

The Court: Was there much wire there that was, as you say, falling apart?

The Witness: In worse shape than these [1362] two.

The Court: Very well. You may resume the stand.

The two middle ones there you say are bad?

The Witness: Yes.

The Court: And the poor is even worse than that?

The Witness: Yes, sir.

(Testimony of Russell H. Mather.)

The Court: Is any one of them poor?

The Witness: Not according to what I saw.

The Court: Not the way you saw those?

The Witness: Not the way I saw the wire.

The Court: Very well. [1363]

* * *

(The question referred to was read by the reporter as follows: "Q. Mr. Mather, did you select for Gonzalez & Blanco in Honolulu any wire and order it from Dulien through Mr. Lacy Hofius?")

The Court: The objections are overruled.

Q. (By Mr. Bunn): You may answer the question. A. Yes.

Q. How much wire did you select and order?

A. Approximately 1500 ton.

Q. What kind of wire did you select and order?

A. Good.

Q. Did you specifically point it out to Mr. Lacy Hofius? A. Yes.

Q. When you pointed it out, was it segregated from other wire? A. Only partially.

Q. To what extent?

A. About 30 per cent was segregated.

Q. Now do you remember when you came back—

The Court: 30 per cent of what? Was this 1500 tons [1366] galvanized or galvanized and black?

The Witness: The 1500 tons was half galvanized and half black.

(Testimony of Russell H. Mather.)

The Court: Was the galvanized wire segregated or segregated by sample?

The Witness: There was very little segregated.

The Court: And likewise the black?

The Witness: Only fairly so.

Q. (By Mr. Bunn): Was it in either one of the two places you have last mentioned, Schofield Barracks and the Marine Base, or was it in both—I mean was part in each?

Mr. Diether: You mean what he selected?

Mr. Bunn: Yes.

The Witness: The galvanized was at the Marine Base, segregated; at Schofield Barracks it was only partially segregated and was black wire.

Q. (By Mr. Bunn): When did you come back to Los Angeles?

A. Sometime in the first part of June.

Q. Were you in Los Angeles on July 26, 1946?

A. Yes.

Q. Did you remain in Los Angeles continuously from then until the end of the year 1946?

A. Yes. [1367]

Q. Do you remember the occasion of the arrival of the SS White Squall from Honolulu?

A. Yes.

Q. When after its arrival did you first see any barbed wire that had come on it?

A. I don't remember the date.

Q. Well, in relation to the unloading of any barbed wire from that ship, when did you first see it?

A. Practically from the beginning.

(Testimony of Russell H. Mather.)

The Court: Does counsel object to the fact that if Mr. Bunn fixes the date of the arrival of the White Squall, is there any dispute about it?

Mr. Dasteel: There is no dispute about it.

The Court: That it arrived July 26?

Mr. John Morrow: We will stipulate it was July 26.

The Court: Very well. [1368]

* * *

Q. Do you know how soon after the arrival of the ship, which arrival was on Friday, July 26, you first saw any wire either on that ship or which had been taken off of that ship?

A. As I recall, it was about five days after the boat arrived that I got on the boat. I may be wrong on that in a day or two, but I don't remember how long.

Q. Were you on the boat before any of the wire was unloaded? A. Yes, sir.

Q. Assuming that the unloading of the boat, the wire from the boat, commenced on Sunday, the 28th, did you see any of the wire on Sunday, the 28th? A. No.

Q. You know you weren't there on Sunday?

A. Yes.

Q. Do you know whether or not you were there on Monday, July 29th? A. I was.

Q. Were you there in the early part of the day?

A. About 7:30 in the morning.

Q. How long did you stay there?

A. Until 6:00 o'clock.

(Testimony of Russell H. Mather.)

Q. At night? [1369] A. Yes, sir.

Q. What did you do while you were there?

The Court: Not everything all those hours?

Mr. Bunn: I was just trying to avoid leading him as I am accused of doing consistently.

The Witness: I watched the unloading of the wire.

Q. (By Mr. Bunn): You were then working for Gonzalez & Blanco? A. Yes.

Q. Did you give any instructions on that day, the 29th?

Mr. Diether: To whom?

Mr. Bunn: To anybody at the dock about the unloading of the wire.

The Witness: Yes.

Q. (By Mr. Bunn): To whom did you give instructions?

A. Transmarine or Marine Terminals, whoever was the terminal operators.

The Court: Go ahead and tell us what happened about unloading wire down there.

The Witness: We had numerous orders for delivery of wire in boxcars—gondolas—and I discussed with the man in charge of the terminal operators at Pier A, with a view in mind of getting the cars and having them pulled alongside of [1370] the vessel for direct unloading, which he did.

The Court: Without going on the dock?

The Witness: Yes, sir, directly from the boat to the cars.

The Court: Yes?

(Testimony of Russell H. Mather.)

The Witness: This they did. I think it was either 10 or 12 cars that were loaded in that manner.

Q. (By Mr. Bunn): On the 29th, or over a period of several days?

A. On an average, four or five cars a day.

Q. Were you there all that time? A. Yes.

The Court: Now we are talking about what happened on this day you were there making the arrangements, or whatever it was. What happened? You talked to the man in charge about having that done and then what else happened?

The Witness: That is all.

Q. (By Mr. Bunn): Did you give any specific instructions about specific wire that should go on gondola cars?

The Court: By "specific" what do you mean?

Mr. Bunn: As distinguished from general instructions.

The Court: As distinguished between galvanized and black, or good, bad, poor, indifferent or what?

Mr. Bunn: Your Honor has put into the question what [1371] counsel won't permit me to put into the question.

The Court: We are trying to find out what happened here, counsel. Let us move along.

Q. (By Mr. Bunn): Mr. Mather, did you give any instructions as to any segregation of galvanized wire from black wire at that time?

Mr. Diether: For loading on the cars?

Mr. Bunn: Yes, sir.

(Testimony of Russell H. Mather.)

The Witness: Merely that the first 10 or 12 cars must be galvanized wire, or a major portion of it galvanized wire, to comply with the orders on hand.

Q. (By Mr. Bunn: Did you watch the actual bringing out of the hold of the ship of the wire which was so brought out that day? A. Yes.

Q. What was the condition of the wire which was so then that day brought out direct from the hold of the ship and put on gondola cars for Gonzalez & Blanco? A. Good.

Mr. Diether: Just a moment. May I hear that question?

(The question referred to was read by the reporter as follows: "Q. What was the condition of the wire which was so then that day brought out direct from the hold of the ship and put on gondola cars for [1372] Gonzalez & Blanco? A. Good.")

The Court: How did that happen? Was there any conversation between you and anybody about it?

The Witness: No, other than that, that I stated that we must have galvanized or a large percentage of galvanized wire in the first 10 or 12 cars.

The Court: To whom did you state that?

The Witness: To the representative of the terminal operators and the supervisor for the Longshoremen's Union.

The Court: And what happened? Did they bring

(Testimony of Russell H. Mather.)

up and put every roll of wire in the cars that came up or did they put some there and some elsewhere?

The Witness: They hit a very good selection of wire down there and by mutual agreement worked that section of wire, figuring that it would be sufficient to fill up the cars on which there was a rush.

The Court: In other words, they took the wire as it came?

The Witness: Yes.

The Court: Out of the hold?

The Witness: Yes, out of that one section.

The Court: During that whole day?

The Witness: For two or three days.

The Court: For two or three days? [1373]

The Witness: Yes, sir.

The Court: Very well.

Q. (By Mr. Bunn): Did they put on the gondola cars for Gonzalez & Blanco any of what you have denominated poor wire? A. No.

The Court: Or bad?

The Witness: No.

Q. (By Mr. Bunn): Did you on any one of those first few days see any wire unloaded onto the dock and placed on the dock?

A. They were unloading. I was only concerned with the cars, I wasn't watching the other.

The Court: Did you see it?

The Witness: Yes.

Q. (By Mr. Bunn): At the same time that that wire was being moved from the ship to the gondola cars for Gonzalez & Blanco? A. Yes.

(Testimony of Russell H. Mather.)

Q. What was the condition as you observed it? Did you observe the condition of the wire which was simultaneously being put on the dock?

A. Not at that time.

The Court: Was it coming out of the same hold in the ship? [1374]

The Witness: No, sir, it was coming out of a hold aft.

The Court: You got your wire——

The Witness: Forward.

The Court: ——forward?

The Witness: Yes.

Q. (By Mr. Bunn): Did you at any time after July 28, which was Sunday, see any chalk marks on the floor of the dock around any piles of wire on the dock?

A. I saw the chalk marks; yes.

Q. What did the chalk marks indicate?

A. Placement of wire for Gonzalez & Blanco and the other for Dulien Steel Company, I think it was.

Q. In other words, the wording "Gonzalez & Blanco" was written in chalk on the dock?

A. Yes.

Q. And the words "Dulien" or "Dulien Steel" were written in chalk marks on the dock?

A. There was a name, I don't remember whether it was "Dulien Steel" or not.

Q. But something other than Gonzalez & Blanco?

A. Right.

The Court: Was it "Londono"?

(Testimony of Russell H. Mather.)

The Witness: I don't think so. [1375]

Q. (By Mr. Bunn): Do you remember how soon in that week, which commenced with Sunday, the 28th of July, you saw those chalk marks for the first time? A. I don't remember when.

Q. When you first saw, as you remember, those chalk marks and the piles of wire designated by them, what was the condition of each separately of those piles of wire?

Mr. Diether: I object to that as indefinite and uncertain.

Q. (By Mr. Bunn): That is——

Mr. Diether: Are you withdrawing the question?

Mr. Bunn: No, I will wait.

The Court: He has not finished yet.

Mr. Diether: I beg your pardon.

The Court: He said, "That is."

Q. (By Mr. Bunn): That is, were the piles which were so separately marked of like or unlike condition? A. Like.

Mr. Diether: Just a moment. May the answer be stricken until I can make my objection?

The Court: The answer may be stricken and you may object. I do not know what he is talking [1376] about.

Mr. Diether: I don't either. That is the objection.

Mr. Bunn: I want to know if there was any distinction in the appearance of those two piles of wire so separated.

(Testimony of Russell H. Mather.)

The Court: Why do you not ask him that?

Mr. John Morrow: I object. There is no foundation laid showing he examined any of the piles.

Mr. Bunn: I asked him if he looked at them, and he said yes.

The Court: The objection is sustained. The answer is stricken.

Q. (By Mr. Bunn): Mr. Mather, how did those piles of wire compare with each other as you observed them?

The Court: In appearance?

Mr. Bunn: Yes.

The Court: Or in size?

Mr. Bunn: No, sir, as to condition of the wire.

The Witness: Similar.

Q. (By Mr. Bunn): Was there good wire, poor wire, bad wire in both piles? A. Yes.

Q. Was there any rusty wire in both piles?

A. Yes.

Q. Was there muddy wire in both piles? [1377]

A. Yes.

Q. To what extent did you yourself supervise the removal of wire for Gonzalez & Blanco? Did you supervise all of it or did somebody else at times supervise the removal of some of it?

A. I was there all the time.

Q. Then you saw all the wire removed from the boat that was removed from the boat?

A. Yes, sir.

The Court: How long did it take to discharge that cargo of wire?

(Testimony of Russell H. Mather.)

The Witness: Either 10 or 12 days all told.

The Court: And you were there every day?

The Witness: Yes.

The Court: Generally supervising the removal and selection of the wire?

The Witness: Yes, sir.

The Court: Very well.

Q. (By Mr. Bunn): Did you cause wire for Gonzalez & Blanco to be selected from any of the piles on the dock as distinguished from direct taking out of the boat?

A. You will have to repeat that, please.

The Court: I think maybe he should reframe it.

Let me ask another question. You were there 10 or 12 [1378] days while they were discharging the cargo of wire for Gonzalez & Blanco?

The Witness: Yes.

The Court: Did they in the meantime discharge the entire cargo of wire?

The Witness: Yes, sir.

The Court: And either on the dock or elsewhere?

The Witness: On the dock except for the first 10 or 12 cars.

The Court: All of it was discharged on the dock except for the first 10 or 12 cars about which you testified which were discharged directly into gondolas?

The Witness: Yes.

The Court: For Gonzalez & Blanco?

The Witness: Yes, sir.

Mr. John Morrow: If the court please, may it be

(Testimony of Russell H. Mather.)

understood that Matson objects to this entire line of testimony on the ground that it is beyond the issues of the complaint as far as Matson is concerned. There is no complaint as to segregation in the complaint.

Mr. Laven: Same objection as far as the Government is concerned.

The Court: The objection is overruled without prejudice to a motion to strike. [1379]

Q. (By Mr. Bunn): Mr. Mather, did you cause to be selected for Gonzales & Blanco——

The Court: Just a moment. How many tons went on in gondolas?

Q. (By Mr. Bunn): How many tons went on in gondolas direct from the ship?

A. Between 250 and 300.

Q. And the balance of Gonzalez & Blanco's wire was obtained from the dock itself?

A. Yes, sir.

Q. And did you supervise that selection?

A. I did.

Q. Did you cause the wire for Gonzalez & Blanco to be selected from any one particular portion of the dock?

Mr. Hubert Morrow: I don't know what counsel means, take it from Dulien's file or Gonzalez & Blanco's file?

The Court: I think that is what he is getting, but it would be quicker to find out if he asked him.

Mr. Bunn: One reason I am going this way is because I am trying to save time on a multiplicity

(Testimony of Russell H. Mather.)

of objections that I would be leading this witness. I figure it would take less time to do it this way than for the court to pass on four objections to each question. [1380]

Mr. Hubert Morrow: On the other hand, it is not understandable what you are talking about.

Q. (By Mr. Bunn): How was the selection made by you for Gonzalez & Blanco's wire?

The Court: The witness has just testified it was put in two piles. Ask him if he took Gonzalez & Blanco's wire from both piles or exclusively from Gonzalez & Blanco's pile

Q. (By Mr. Bunn): Will you answer that question? A. From both piles.

Q. Throughout the entire time of removal?

A. Naturally, we went to Gonzalez & Blanco's pile first, exhausting that pile.

Q. Did you take all of the wire which was in the pile marked Gonzalez & Blanco? A. No.

Q. What did you not take?

A. The wire that we didn't want.

The Court: Which wire didn't you want?

The Witness: The poor wire, the bad.

The Court: The bad?

The Witness: The bad and the poor wire.

The Court: The bad and the poor wire?

The Witness: Yes, sir. [1381]

The Court: You left that then and went over to the other pile and got the rest of it?

The Witness: Yes, sir.

The Court: How much did you leave of the bad

(Testimony of Russell H. Mather.)

and poor wire in the Gonzalez & Blanco pile? In other words, how much did you get from the other pile? Do you remember?

The Witness: I don't recall. We worked so long, it was covering such a long period of time, that it is difficult for me to estimate how much wire we left when we went into the other pile and how much of that we took.

The Court: Well, about how much? Gonzalez & Blanco had an order for how many tons?

The Witness: 1500 tons.

The Court: 1500 tons?

The Witness: That is right.

The Court: And you shipped about 250 tons, you said, on the gondola cars?

The Witness: 300.

The Court: Or 300?

The Witness: Yes.

The Court: That would leave about 1200 tons.

The Witness: That is right.

The Court: About how many tons did you have to get from the other pile to fill your order? Half of it?

The Witness: About 600 or 700 tons. [1382]

Q. (By Mr. Bunn): How much good wire in all did you get? Did you get 1500 tons of good wire?

A. Yes, sir.

Q. Now after the 1500 tons of good wire had been removed, did you observe the condition of the wire which then remained on the dock?

A. Yes.

(Testimony of Russell H. Mather.)

Q. Did you observe the quality of the wire which remained on the dock? A. Yes.

Q. What was the condition of the wire which remained on the dock?

A. Good, bad and poor.

Q. What proportion of that which remained was good?

Mr. O'Malley: I don't think any foundation has been laid for this, your Honor. I want to expedite this trial as much as possible, but I think counsel should lay some foundation for the examination by this witness.

The Court: Overruled.

How much of it was good that was left?

The Witness: About 10 per cent.

The Court: How much of it was bad and how much poor?

The Witness: About 25 per cent bad and the remainder poor. [1383]

The Court: By "poor" you mean worse than bad?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Did you handle any of the wire which went to Mr. Londono?

A. Naturally.

Q. I mean, did you handle it with your hands?

Mr. Dasteel: Just a moment. I object to that on the ground that the question is not specific. He doesn't say what wire that went to Londono, whether it was after Gonzalez & Blanco or not.

(Testimony of Russell H. Mather.)

The Court: There is no foundation. It does now show he knows what wire went to Londono.

Mr. Bunn: All right. I will clear it up.

Q. Did you handle any of the wire on the dock which did not go to Gonzalez & Blanco?

Mr. John Morrow: I object to that, calling for a conclusion.

The Court: Overruled.

Q. (By Mr. Bunn): I mean with your hands.

A. Yes.

Q. Did you break any of it? A. Yes.

Q. Did you have to make an effort to break it with [1384] your hands or did it break easily?

Mr. O'Malley: If your Honor please, I think this witness can testify without the assistance of counsel. I know we have to get on with this trial, but counsel ought to be able to frame questions which are not leading. Mr. Bunn might as well get on the witness stand and be done with it.

Mr. Bunn: I either have to do it that way or I meet the court's admonition that I should get to the point and be specific.

Mr. O'Malley: We have experienced counsel here who know how to examine a witness.

Mr. Dasteel: I would like to add to Mr. O'Malley's objection and say you can go to any pile of barbed wire and after examining it you can find a piece that you can break with your hands.

The Court: Are you testifying?

Mr. Dasteel: I am making my objection.

The Court: That you can go to any pile?

(Testimony of Russell H. Mather.)

Mr. Dasteel: Any large pile of wire that has been out in the open for several years.

The Court: What do you mean by "large"?

Mr. Dasteel: A thousand pounds.

The Court: Objection overruled.

Mr. Dasteel: In other words, I hope that your Honor isn't going to ask me to break some of that. [1385]

The Court: Objection overruled. Let me hear the question.

(The question referred to was read by the reporter as follows:

("Q. Did you have to make an effort to break it with your hands or did it break easily?")

The Court: The long and short of it is, did it break easily or was it good wire?

The Witness: Yes.

The Court: Some of it broke easily?

The Witness: Yes.

The Court: Did you have to take a pair of pliers and twist it?

The Witness: No.

The Court: You could just break it with your hands?

The Witness: Yes.

Q. (By Mr. Bunn): Now, Mr. Mather—

The Court: Excuse me, counsel. That is, the wire that remained on the dock after you had taken all of the deliveries for Gonzalez & Blanco?

(Testimony of Russell H. Mather.)

The Witness: Yes, sir.

The Court: Now, about how much of the wire that remained on the dock after that was in that condition, or appeared to be? [1386]

The Witness: Probably 2 per cent.

The Court: Is that what you call poor wire?

The Witness: Yes, sir; unusable.

The Court: Unusable?

The Witness: That is right.

The Court: And about how much of it was bad wire?

The Witness: Oh, 85 per cent, 80 or 85 per cent.

The Court: And the remainder was good?

The Witness: Yes, sir.

The Court: And the bad wire you considered usable?

The Witness: Yes, sir, requiring processing before it is usable, but usable.

The Court: That is, it would have to be either oiled or pickled?

The Witness: That is right.

The Court: Or something?

The Witness: Yes.

The Court: In other words, the 2 per cent was beyond redemption?

The Witness: Yes, sir.

The Court: And the 85 per cent was usable in its then condition?

The Witness: Yes, sir.

The Court: And the remainder, about 13 per cent, was——

(Testimony of Russell H. Mather.)

The Witness: Good. [1387]

The Court: —good wire?

The Witness: Yes.

Q. (By Mr. Bunn): Now, Mr. Mather, after Gonzalez & Blanco had caused to be removed 1,500 tons of the wire from the dock, did they later under contract from Londono take some of that which had remained? A. Yes.

Q. I show you Exhibit for identification No. 42, which is the agreement between Londono and Gonzalez & Blanco dated Octobed 22, 1946, and ask you if you recognize the signature purporting to be that of Thomas Gonzalez. A. I do.

Q. What is the middle initial? A. P.

The Court: What is the difference? Nobody is claiming that that contract was not executed, are you?

Mr. Dasteel: No.

Mr. O'Malley: It is in evidence.

The Court: It is in evidence.

Mr. Bunn: No, it is in for identification only.

Mr. O'Malley: There is no question about the execution of it.

Mr. Bunn: I offer the contract in evidence.

The Court: What is the number? [1388]

Mr. Bunn: No. 42.

The Clerk: It is in evidence, your Honor.

The Court: It is in evidence?

The Clerk: Yes.

(Testimony of Russell H. Mather.)

Q. (By Mr. Bunn): I will ask you if you caused to be made in the office of Gonzalez & Blanco any statement of the quantities of wire which Gonzalez & Blanco purchased from Londono under that contract of October 22, 1946? A. I did.

Q. I show you a document marked No. 48, for identification, and ask you if that was prepared in your office? A. It was.

Mr. Diether: Just a moment. I object to that, if the court please. It is a self-serving statement.

The Court: Overruled. If it was prepared in his office, what is the difference? How can that hurt or help? It is an introductory question.

Mr. Diether: As I understand counsel's purpose, it is merely to show the quantity of wire.

The Court: I know what his purpose is, but he can ask where it was prepared, and it does not make any difference.

Q. (By Mr. Bunn): You say it was prepared in your office? A. Yes. [1389]

Q. Under your direction? A. Yes.

Q. Can you, from that document, tell us how much wire Gonzalez & Blanco purchased from Londono under the contract of October 22, 1946?

Mr. Diether: That is objected to, your Honor.

The Court: Is there any question about that quantity?

Mr. Diether: Yes.

Mr. O'Malley: There is a very considerable question as to the amount. [1390]

(Testimony of Russell H. Mather.)

Q. (By Mr. Bunn): Mr. Mather, was that statement which you have in front of you prepared under your direction? A. Yes.

Q. In the ordinary course of business in the office of Gonzalez & Blanco? A. Yes.

The Court: May I see it?

(The document referred to was passed to the court.)

Q. (By Mr. Bunn): Will you, with the aid of that statement, tell us how many 28-pound coils of wire Gonzalez & Blanco received from Londono under the contract of October 22, 1946?

Mr. Dasteel: Just a minute, before you answer that. I would like to see the exhibit which the court has.

(The exhibit referred to was passed to counsel.)

The Court: While counsel is looking at that, may I not ask you, Mr. Mather, is that statement No. 48, which is before you and which Mr. Dasteel is now looking at, a summary statement taken from the books and records of Gonzalez & Blanco [1391] of the transaction to which it relates?

The Witness: It is.

The Court: It was compiled under your direction, was it?

The Witness: At my request.

The Court: At your request?

The Witness: Yes, sir.

(Testimony of Russell H. Mather.)

The Court: And by the bookkeepers and other people in the regular course of your business?

The Witness: That is right.

Mr. Dasteel: Your Honor please, my objection to this testimony is on the grounds that there is no supporting evidence. This is simply a statement of Gonzalez & Blanco to Londono specifying a number of coils, a number of tons, and an amount of money, but there is no supporting evidence to show that the figures appearing thereon are correct. Therefore I object to it.

Mr. O'Mally: We join in the objection, if your Honor please.

The Court: In connection with that, I doubt not but what you would be entitled to have Gonzalez & Blanco bring their entire books and records up here.

Mr. Dasteel: Not all of them, but some evidence, your Honor.

The Court: Their entire books and records, so that you could pick out the particular items as they are entered from [1392] time to time. The witness has just testified that this is taken from their books and records and is a summary statement of what they contain. He is entitled to testify concerning it and you are entitled upon cross-examination, if you desire, to have them produce their books and records to show it. The objection is overruled.

Q. (By Mr. Bunn): Now before I proceed with further questions on this statement, was there prior to the receipt by Gonzalez & Blanco of wire under

(Testimony of Russell H. Mather.)

the contract of October 22nd taken by Gonzalez & Blanco any wire for experimental pickling purposes? A. Yes.

Q. Is that wire so taken for experimental pickling purposes included in here?

Mr. Diether: Included in here? You mean in Exhibit 48?

Mr. Bunn: In that Exhibit 48.

The Witness: No.

Q. (By Mr. Bunn): Now did you have any part in the experimental pickling of any wire before the contract of October 22nd was made?

A. Well, I had a part in it. I don't recall the dates.

Q. You did have a part in it? A. Yes.

Q. Did Gonzalez & Blanco take some tonnage and have it pickled? [1393] A. Yes.

Mr. Dasteel: Pardon me. Are you now referring to the Londono wire?

Mr. Bunn: Yes.

The Witness: Yes.

Q. (By Mr. Bunn): Who did the pickling?

A. Bernard Epps Company.

Q. Do you know what pickling is when applied to wire? A. Sure.

Q. What is it?

A. The wire is subjected to a chemical process which removes the galvanization, dirt, rust and extraneous material.

Q. Is that all it does? Does it put anything on it after it is removed? A. No.

(Testimony of Russell H. Mather.)

Q. In other words, it is a removing and cleaning process? A. It is.

Q. Now, will you take your statement No. 48, and state how many coils—I will withdraw that.

Does that statement, No. 48, show the full quantity in number of coils and tonnage of barbed wire which Gonzalez & Blanco received from Londono under the contract of October 22, 1946? [1394]

The Court: You mean after the contract?

Mr. Bunn: Yes, sir.

The Court: And not under?

Mr. Bunn: After and in accordance with the terms of that contract.

Mr. Diether: I object to that as being indefinite and uncertain.

The Court: It calls for a conclusion if it asks this witness if it was in accordance with the terms. If it calls for a date it does not call for his conclusion. What is your question?

Mr. Bunn: My question is whether or not that statement shows all the wire which Gonzalez & Blanco received from Londono.

The Court: After the date of the contract?

Mr. Bunn: After the date of the contract of October 22.

The Court: And what they did with it and what became of the money?

Mr. Bunn: Yes, your Honor.

The Witness: Yes.

Q. (By Mr. Bunn): Mr. Mather, I notice on that statement under date of November 25, 1946,

(Testimony of Russell H. Mather.)

check No. 35616 for \$1,000. Do you know on what particular account the \$1,000 was paid?

Mr. Diether: That is objected to as it is provided for [1395] right in the contract.

The Court: Let him finish.

Q. (By Mr. Bunn): Was it for any specified number of tons of wire or was it for demurrage as mentioned in the contract of October 22, 1946?

Mr. Diether: The contract speaks for itself. It specifies that he is to pay \$1,000 on account of demurrage charges.

Mr. Bunn: I want to know whether this is the \$1,000 which was so paid.

The Court: Objection overruled.

The Witness: Yes.

Q. (By Mr. Bunn): I notice from the statement, Mr. Mather, that there is this language which I want you to explain, if you will. There appears the figures 838 tons total received, near the top of the statement, and then I read: "Less total number of coils remaining not fit for pickling and unusable and unmarketable now accruing storage charges at Bernard Epps'," etc., and that there are then deducted 2080 coils from the total above of 23,173 coils, and that there are then deducted 104 tons from what is above it, namely, 838 tons. Will you explain why that deduction was made?

A. That amount of wire was remaining at those two cases in such a condition that it couldn't be pickled, [1396] cleaned, or anything done with it.

(Testimony of Russell H. Mather.)

Q. And Gonzalez & Blanco refused to take it?

Mr. Diether: At that time?

Mr. Bunn: At that time.

The Witness: Yes.

Q. (By Mr. Bunn): And refused to take it at \$51 a ton? A. Yes.

Q. Did you subsequently take it? A. Yes

Q. At what price?

A. \$4 or \$4.50, somewhere around in there. I don't recall.

Q. Did you at any time in the spring of 1947, see any of that wire at Lomita?

Mr. Diether: Isn't that already agreed to, that that wire was sold to Gonzalez & Blanco for \$4.50? You put in the agreements here.

The Court: I do not know what is agreed to, counsel. I was under the impression that the matter of the disposition of this wire which remained on the dock after the shipments to South America had been agreed to by everybody.

Mr. Diether: That is correct.

The Court: But just a few moments ago, and before recess, you said there was a very serious dispute about how much [1397] wire Gonzalez & Blanco had gotten, and so forth. So counsel had just as well go ahead and prove his case.

* * *

Q. (By Mr. Bunn): Did you see any of it in the Lomita area? A. Sure.

The Court: Any of the remaining wire, the wire

(Testimony of Russell H. Mather.)

they would not take, is that what you are talking about?

Mr. Bunn: The wire that they wouldn't take at first.

The Witness: Yes. [1398]

Q. (By Mr. Bunn): Did you accompany Mr. Dasteel and Mr. Bunn and anybody else down to the location of somewhere in the Lomita area in the spring of 1947?

A. I met you there. I didn't accompany you.

Q. And you met Mr. Dasteel there?

* * *

A. I don't remember seeing Mr. Dasteel. I remember seeing a representative of Mr. Dulien there.

Q. But you don't remember who it was?

A. No, I don't.

Q. What was the condition of the wire which you there saw in the spring of 1947?

A. Junk.

The Court: How much was it?

The Witness: 104 tons.

The Court: How do you know it was 104 tons?

The Witness: I counted it. [1399]

Q. Where was it, in Lomita?

The Witness: In the Contractors Supply Company, the cleaning and pickling company.

The Court: That is where you had it pickled?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Did you have pickled in addition to the 25 tons or so for experimental

(Testimony of Russell H. Mather.)

pickling prior to the date of the contract of October 22, any of this wire which you bought from Londono as it is shown on the statement No. 48? After you bought it did you have it pickled?

A. Yes.

Q. What did it cost you to have it pickled?

Mr. Diether: I object to that as incompetent, irrelevant and immaterial, not bearing on any issue involved in this case.

The Court: Overruled.

Q. (By Mr. Bunn): What did it cost you to have it pickled?

A. The prices varied from \$30 to \$44 or \$43 a ton. I could explain that due to the fact that the pickling concerns after an initial run found their expenses were so great that they couldn't continue at those prices. Bernard Epps increased his price to \$30, then stopped because of labor trouble. Then we shipped it over to the Contractors Supply [1400] Company, who continued with the pickling and I think the total cost was around \$40 or \$43 a ton at Contractors.

Q. And you paid as high as that last mentioned figure for the pickling of some of it?

A. Yes, pickling and costs, that is, hauling and labor costs.

Q. Do you remember the manner in which there was transmitted to the Citizens Bank the payments which are shown in the lower left-hand corner of that statement No. 48?

(Testimony of Russell H. Mather.)

The Court: By the way, did Gonzalez & Blanco transmit the payments to the Citizens National Bank that it indicated on Exhibit 48?

The Witness: Yes, sir.

The Court: On or about the time indicated there?

The Witness. Yes, sir.

The Court: And in or about those amounts?

The Witness: Yes, sir.

The Court: And your question is, in what manner?

Mr. Bunn: Yes. I want to know whether they were transmitted direct to the bank or to Mattoon & Company and from Mattoon & Company to the bank.

The Witness: I think the first two or three payments were made to Mattoon and the remainder were made to the bank.

The Court: Directly?

The Witness: Yes, sir. [1401]

The Court: By check from Gonzalez & Blanco?

The Witness: Yes, sir.

Q. (By Mr. Bunn): And the checks were payable to the Citizens National Bank?

A. That I couldn't say. I don't know.

Q. Do you yourself have any explanation for the language opposite the payment date of March 31, 1947, which reads "Draft collection by Citizens National Bank"?

A. Yes.

Q. What is your explanation?

A. We made a sale of some wire to a firm, I

(Testimony of Russell H. Mather.)

believe in Mexico, and made an arrangement with the Citizens National Bank where they would apply the profit, our profit, from that transaction against the obligation due them on this wire.

Q. On the Dulien contract?

A. On Londono.

Q. I mean on the Londono contract?

A. Yes.

Q. And in that manner the \$7,454.46 payment was made? A. Yes.

Q. Now, Mr. Mather, had Gonzalez & Blanco prior to July 26, 1946, purchased and sold any barbed wire in Los Angeles County, California?

Mr. O'Malley: What is the purpose of this line of [1402] inquiry?

The Court: I have a suspicion that he is probably laying a foundation upon which he expects to extract expert testimony. Is that it?

Mr. Bunn: I am going into the value, the reasonable market value of the barbed wire.

The Court: That is, his expert testimony concerning it?

Mr. Bunn: Yes, sir.

The Witness: Yes.

Q. (By Mr. Bunn): Did you after July 26, sell any other barbed wire besides that which you bought from Londono?

A. Did you say after?

Q. Yes, after July 31.

The Court: During the year 1946, did you, your firm and you in connection with it, deal in the buying

(Testimony of Russell H. Mather.)

and selling of barbed wire, galvanized and otherwise, in and about Los Angeles County, California, during the whole year?

The Witness: Yes.

Q. (By Mr. Bunn): Mr. Mather—and answer yes or no, please, to this question—do you know what was the reasonable market value in Los Angeles for export to South America in ton lots in August, September, October and November, 1946, of unused Government surplus barbed wire, 12 and 12½ gauge, two-strand with [1403] 4 point barbs spaced at 3 inch and 4 inch intervals in good condition, black and galvanized?

Mr. Laven: Just a moment. The Government objects on the ground that it is for export. The market value would be the reasonable value in the United States or in Los Angeles County, not for export purposes.

The Court: Overruled.

Mr. John Morrow: Matson joins in the same objection. The complaint alleges the value in Los Angeles County, it doesn't allege for export.

The Court: Objection overruled.

Mr. Dasteel: I join in the objection.

Mr. Diether: The Bank objects on the ground that there is not a proper foundation laid, and on the further ground that the question includes "in good condition" and there is no such specification in the contract between Dulien and Londono.

Mr. John Morrow: We add that to our objection.

(Testimony of Russell H. Mather.)

The Court: I do not know that there is sufficient foundation laid for the question. It has not been shown that he knows or has an opinion as to the market value.

Mr. Bunn: I haven't yet asked him what it was.

The Court: The question is whether or not he has an opinion as to the market value.

Mr. Bunn: I will go into that. [1404]

The Court: The market value of wire located in Los Angeles County for export to South America of the description you gave.

Q. (By Mr. Bunn): I want to ask you some more questions then in order to lay a foundation.

Do you know how much barbed wire Gonzalez & Blanco sold in the year 1946 in all?

A. I don't know without looking at the records.

The Court: About how much would you say?

The Witness: Between 3,000 and 4,000 tons.

Q. (By Mr. Bunn): Did you buy some of it from somebody other than Dulien? A. Yes.

Q. And other than Londono?

A. Yes.

Q. Did you make inquiries beyond the boundaries of the state of California for the ascertainment of—

The Court: I think that that is an appropriate question on cross-examination.

Mr. Bunn: All right, sir.

Q. Do you have an opinion as to what was the value, the reasonable market value, for export in ton

(Testimony of Russell H. Mather.)

lots of wire as I described it in my original question? [1405] A. Yes.

Mr. Diether: Same objection.

Mr. John Morrow: Same objection.

The Court: During the period July and August, 1946?

The Witness: Yes, sir.

The Court: Objection overruled.

Mr. John Morrow: If the Court please, the question was subsequent to July.

Mr. Bunn: I said July and August and September and October and November. I can take it month by month, if necessary. I thought I would save time.

Q. In August of 1946? A. Yes.

The Court: During those periods, do you have an opinion as to the fair market value?

The Witness: Yes, sir.

The Court: Did it change between July, August, September and October, that is, the fair market value at Los Angeles for wire in ton lots to be exported to South America?

The Witness: No.

The Court: All right.

Q. (By Mr. Bunn): What was that fair market value for black wire?

Mr. Diether: My objection goes to the fact that the question includes wire in good condition, as I have objected [1406] to before.

The Court: Overruled.

(Testimony of Russell H. Mather.)

Mr. Diether: May that objection go to all this line of testimony?

The Court: Surely.

Mr. John Morrow: And the same as to Matson?

Mr. Laven: And the same on behalf of the Government?

The Court: Yes, and Dulien.

Mr. Dasteel: And Dulien.

The Court: Overruled.

Q. (By Mr. Bunn): What was that for black wire? A. \$120 to \$140 a ton.

Q. F.o.b. Los Angeles? A. No, delivered.

The Court: Delivered to South America?

The Witness: Mexico, South America, Central America.

Q. (By Mr. Bunn): What was the value of galvanized? A. \$160 to \$180 delivered.

The Court: And your use of the word "good" there corresponds to your testimony as previously given about good, bad and poor?

The Witness: Yes, sir. [1407]

Q. (By Mr. Bunn): Do you know whether or not there was available in the month of August or the month of September, and so forth, 1946, good galvanized wire of the description I have just been interrogating you about in Southern California?

* * *

Q. Other than that which you obtained as good wire from Dulien? A. I couldn't find any.

Q. Did you try? A. Yes.

The Court: How about black wire?

(Testimony of Russell H. Mather.)

The Witness: I couldn't find any.

The Court: How long had you been trying?

The Witness: Every 30 days.

The Court: Beginning when?

The Witness: Beginning around February or March of 1946.

Q. (By Mr. Bunn): And you went to Honolulu and searched for some, didn't you?

A. No. [1408]

Q. Were you over there on something else?

A. Specifically.

The Court: You mean you were there for something else specifically?

The Witness: No, this one wire specifically.

The Court: You went over there specifically in connection with this wire?

The Witness: Yes, sir.

Q. (By Mr. Bunn): Did your search for barbed wire extend beyond the boundaries of the state of California? A. Yes, sir.

Q. To what ends of the earth did it go?

A. To the east coast of the United States.

Q. You say most of the United States?

A. East coast of the United States.

Q. Mr. Mather—answer yes or no—do you know whether or not there was anybody in Southern California who in the last six months of 1946 was willing to pay any more than \$51 per ton for any of the wire which you bought from Londono in the condition in which it was when you bought it? [1409]

(Testimony of Russell H. Mather.)

The Witness: I don't know.

Q. (By Mr. Bunn): You mean you don't know anybody who would? A. I don't know.

The Court: Mr. Mather, at that time was there a general buyers' and sellers' market for barbed wire to be pickled in this community?

The Witness: No, sir.

Q. (By Mr. Bunn): Mr. Mather, do you know exactly how much wire Gonzalez & Blanco received from the White Squall under bill of lading LA-22, which was the bill of lading issued to Gonzalez & Blanco? A. Approximately 1,500 tons. [1410]

* * *

Q. Do you know approximately when Gonzalez & Blanco completed the removal of their wire under their bill of lading from Pier A at Long Beach as distinguished from any of [1411] that they bought from Londono?

A. September or October, sometime around in there.

The Court: I am at a loss now, Mr. Mather. I had the impression that the unloading took 10 or 12 days.

The Witness: Yes, sir.

The Court: And then it remained on the dock and it took you several weeks or a month to——

The Witness: About 60 days.

The Court: ——about 60 days to take delivery from the dock?

The Witness: Yes, sir.

* * *

(Testimony of Russell H. Mather.)

Cross-Examination

By Mr. Dasteel:

* * *

Q. Now drawing your attention to the four rolls of wire to my right in the courtroom and to the left of his [1412] Honor, the judge, would you say that each of the four rolls there were usable?

A. Yes.

Q. Now you testified too that you met Mr. Lacy Hofius in Honolulu and you made a selection of wire. Now just what did you mean by a selection? Was it a physical selection? Did you go to the barracks and point out each roll of wire, or did you sit down with Mr. Lacy Hofius and on paper tell him what you wanted? Just tell us how you made the selection.

A. We went to the Marine Corps Barracks and there was a lot of wire which was already on pallets stacked up. We went over that wire very carefully as best we could on the outside and around the piles. He agreed upon my request that that wire would be shipped first to us of the total of 1,800 tons which we purchased. That was the first lot to go out.

We went from there to Camp Schofield. At Camp Schofield we saw some wire on pallets, others in piles. We went over the wire that was on the pallets very carefully, I pointing out to Mr. Hofius the type of wire which we wanted. He agreed that we should get that type of wire in sufficient quantities from Schofield.

The wire at the other location, which I am unable

(Testimony of Russell H. Mather.)

to clearly identify, we decided to skip. It was small in quantity and the good wire there was insufficient to make it worth while. [1413]

Q. How did you assure yourself that the wire that you pointed out at these various places that you have just testified to where the wire was located, how did you assure yourself that that particular wire was moved to the dock ready for shipment and loading on board the White Squall?

A. May I, rather than answering that question, lead up to that?

The Court: He said "how." That gives you a pretty broad latitude.

The Witness: We had an original shipment of 300 tons which was to be made from Honolulu on the first available boat and was delivered to the dock to the boat and delivered to Los Angeles. The quantity and the quality were exactly in accordance with the description of the wire that I had given Mr. Gonzalez and being located at the Marine Corps Barracks.

The Court: When was this shipment now?

The Witness: The shipment I think was in June. We felt that we could completely rely upon receiving deliveries in accordance with our contract after the original shipment. [1414]

* * *

Q. Did you see the wire on the dock at Honolulu before it was loaded aboard ship? A. No.

Q. This wire was sold to you, was it not, by Dulien f.o.b. the dock at Honolulu? A. Yes.

(Testimony of Russell H. Mather.)

Q. And you arranged for the shipping from Honolulu to Los Angeles yourself? A. Yes.

Q. Do you recall the first day that you saw wire aboard the White Squall when it arrived at the Long Beach pier?

A. I recall the day but not the date.

Q. Didn't you testify that it was on the 30th of July?

A. I testified approximately. It was on a Monday.

Q. You went aboard the ship? A. Yes.

Q. And did you go down into the hold where the wire was stored? A. Yes, once. [1415]

* * *

The Court: One was forward and one was aft? There were two holds on that ship?

The Witness: No, there were four holds but they were all full of wire.

The Court: The whole boat was full of wire?

The Witness: Yes, sir. [1416]

* * *

Q. I will bring you back now into the hold of the ship, Mr. Mather, and ask you what you observed in connection with wire that was stored aboard ship as to its segregation. Was any of it marked for Gonzalez & Blanco? A. No.

Q. Now did you inquire of anybody aboard ship in regard to segregation? A. No.

Q. You testified that you gave instructions for

(Testimony of Russell H. Mather.)

unloading on four gondolas, railroad cars of wire——

The Court: It was more than four. He said three or four a day.

Mr. Dasteel: Three or four a day.

Q. Did you instruct them to load galvanized wire or black wire? A. Galvanized. [1418]

Q. Only galvanized?

A. All galvanized or the greatest majority of galvanized, is what our order called for.

Q. What was loaded on the first few cars, all galvanized or was it mixed?

A. 99 per cent galvanized.

Q. And 1 per cent black? A. About.

Q. In other words, out of every 100 rolls there was one roll of black? A. That is right.

Q. How was this wire unloaded?

A. How was it unloaded?

Q. Yes, exactly what happened? Was it unloaded by the Marine Transportation Company? Who lifted the wire out of the hold of the ship and hoisted it alongside the dock, what company?

A. I think it was Marine Terminals.

Q. Marine Terminals?

A. Whoever were the terminal operators for that dock.

Q. Did you see them do that? A. Sure.

Q. And did you direct them as to which hold of the four holds in the boat that they should lift the wire from? A. No, sir. [1419]

Q. In other words, that was their option, as to

(Testimony of Russell H. Mather.)

how they would remove it from the boat, as far as you know?

A. They opened the hatches and the hold and said, "We are going to start"—they had started—"This is as good a place to work as any," so they started in there and worked.

Q. Was someone down in the hold carrying out your instructions to make this selection?

A. No, not exactly. They weren't working on my instructions. In this hold there was a section of wire that looked to me to be particularly good and desirable for these orders that we had. I asked the supervisor of the longshoremen, the stevedores, if they could please load as much of that section of wire in the cars as possible, as we were most anxious to get these orders filled.

They agreed, and they said they would be glad to, and did.

Q. In other words, from your observation in one of the holds there was a stack of wire that looked good to you and you told them to unload that first, is that it? A. That is right.

Q. And I believe you testified that in the four holds there were several thousand tons or more tonnage than you had purchased?

A. On the boat.

Q. You testified you purchased 1,500 [1420] tons? A. Yes, sir.

Q. And you observed four or five thousand tons in the hold there?

Mr. Bunn: He didn't so testify.

(Testimony of Russell H. Mather.)

The Witness: I approximated the figures. I don't know what was there.

Q. (By Mr. Dasteel): What was your approximation of the tonnage you saw in the four holds?

A. Between 3,500 and 4,000 tons on the whole boat.

Q. Now at the time you were unloading wire for Gonzalez & Blanco, did you see any other parties unloading wire for Londono?

A. I wouldn't know.

Q. Did you see any of this wire from the boat being unloaded other than that which was being unloaded for Gonzalez & Blanco?

A. Yes, sir.

Q. You did? A. Yes, sir.

Q. And where was that placed?

A. On the dock.

Q. Any particular place on the dock?

A. In two sections.

Q. Was it marked? [1421]

A. The sections were marked.

Q. A section marked "Londono" or "Dulien"?

A. I don't recall. There was a name, and there was a section marked "Gonzalez & Blanco."

Q. You testified there were two piles on the dock. Wasn't one marked with chalk "Gonzalez & Blanco"?

A. Yes.

Q. And wasn't there another pile marked "Dulien"?

A. I said it was marked with a name. I don't recall what the name was.

(Testimony of Russell H. Mather.)

Q. And you testified that you instructed your men to unload, to take from both piles?

A. We worked our pile first.

Q. Yes, but thereafter you didn't entirely deplete your pile before you asked them to unload from the other pile, isn't that correct?

A. That is right.

Q. By what authority——

A. Not unload, load.

Q. What is that? A. Not unload, load.

Q. All right, load.

By what authority did you take wire from the dock other than which was intended for your company?

A. By authority of—I think it was the Maritime [1422] Commission, although I am not sure. I received——

The Court: The War Shipping Administration?

The Witness: I think it was the Maritime Commission.

The Court: You received what?

The Witness: I received word from the Terminal operators that I could proceed and select wire from other piles to complete our order.

Q. (By Mr. Dasteel): Who in particular gave you this permission, do you recall?

A. A Mr. Applegate informed me that he had been informed that such permission should be given us.

The Court: Mr. Appelgate is connected with——

The Witness: He was the foreman for the Terminal operators on the dock.

(Testimony of Russell H. Mather.)

The Court: And thereafter did you take from different piles?

The Witness: I took the best I could get.

The Court: From any pile?

The Witness: Any pile and all piles.

Q. (By Mr. Dasteel): Referring again to Exhibit No. 48, you have testified that several tons were purchased by you from Londono under the agreement referred to at \$51 a ton, and then there was left over some wire that they couldn't pickle and you [1423] purchased that at \$4.50 a ton?

A. That is right.

Q. Then there was some more left, was there not?

A. Not that I know of.

Q. Do you know whether or not all of the tonnage that was delivered to Lomita for pickling was eventually pickled, all of it?

A. All except that that remained.

Q. Remained where?

A. At Lomita, which we purchased at \$4.50.

Q. Now what was the name of the firm that did the pickling? I believe you referred to it.

A. Contractors Supply Company.

Q. Contractors Supply Company?

A. That is right.

Q. Did your company, Gonzalez & Blanco, remove all of the wire from the Contractors Supply Company? A. Yes, sir.

Q. Did they leave some debris, some scrap, there, the ones that you testified you could break with your fingers, that type? A. The 104 tons.

(Testimony of Russell H. Mather.)

Q. They left 104 tons?

A. Well, eventually it all went.

The Court: You mean it all came back to you? [1424]

The Witness: Yes, sir.

The Court: Did they finally abandon any there? That is what you are getting at?

Mr. Dasteel: Yes.

The Witness: Not that I know of. I mean, the Contractors Supply Company could tell you whether it was one or two coils or scrap that was left around, but I don't know because I didn't stay there.

Q. (By Mr. Dasteel): In any of this wire that you handled for or purchased for Gonzalez & Blanco, was there any scrap left over that couldn't be used at all or sold?

A. The 104 tons which was sold as scrap.

Q. Which was sold as scrap?

A. Yes. [1425]

* * *

May 4. 1950

GEORGE M. STEPHENSON

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: Be seated, please. Will you state your name, please, sir?

The Witness: George M. Stephenson.

The Clerk: And your address, please?

The Witness: 413 West 7th Street, San Pedro, California.

(Testimony of George M. Stephenson.)

Direct Examination

Q. (By Mr. Bunn): Mr. Stephenson, you are a lawyer licensed to practice and are practicing in the state of California? A. I am.

Q. Your office is in San Pedro?

A. Yes, sir. [1428]

Q. Did you in 1946 act as attorney in any matter for Gonzalez & Blanco? A. Yes, I did.

Q. Was that service by you in connection with the barbed wire transaction arising out of a bill of lading from Dulien Steel Products?

A. Yes, it was.

Q. Did you in the month of August, 1946, in connection with that matter have any contacts with Matson Navigation Company? A. Yes, I did.

Q. With whom in the office of Matson Navigation Company?

A. As I recall, it was a man by the name of Mr. Banning.

Q. Had you been theretofore acquainted with Mr. Banning? A. No, I had not.

Q. Now, do you remember the occasion of your first communication with or from him in that regard? A. Yes, I do.

Q. Independently of any documents do you remember when it was in relation to the first day of August, 1946?

A. No, not without the use of a document.

(Testimony of George M. Stephenson.)

Q. Did you personally confer with Mr. Banning face to face? A. Yes, I did. [1429]

Q. In their Los Angeles office?

A. Yes, I did.

Q. Was that face-to-face conference before or after the writing of any letter or letters from you to Matson?

A. Before the writing of the letter.

Q. I have just shown counsel a document as to the existence of which I had no knowledge until last night, even after I had made arrangements for this witness to come here. Is that not correct, Mr. Stephenson?

A. That's right. I didn't remember that the letter existed until I examined my file late last night.

Mr. Bunn: I intended to show this to counsel earlier, but Mr. Stephenson was unfortunately delayed and just got here about the time court opened so that I hadn't had a chance to do it.

Q. (By Mr. Bunn): While counsel are examining the document, if they don't mind I will ask you if anybody else was present at the conference which you had with Banning in Matson's Los Angeles office before the writing of the letter?

A. Yes.

Q. Who else was present?

A. I believe Mr. Grinstein was.

Mr. Hubert Morrow: A little louder, please.

The Witness: A Mr. E. S. Grinstein, but I don't remember from my recollection the presence of anybody except from the [1430] letter.

(Testimony of George M. Stephenson.)

Q. (By Mr. Bunn): That is the Mr. Grinstein of Dulien? A. Yes.

Q. Do you know how long before the letter was written the conversation took place?

A. It was the day before.

Q. Did you have any documents in your possession bearing on the Gonzalez & Blanco purchase when you were at that conference?

A. I don't recall that. I may have had a copy of the bill of lading, but I would be guessing.

Q. Prior to that conference were you acquainted with a Mr. Ball of the War Shipping Administration office in San Francisco?

A. I had a telephone acquaintance with him. I dealt with him on the telephone.

Q. Arising out of one or more than one telephone contact prior to that time?

A. Arising out of more than one, many more than one telephone conference.

Q. You knew his voice on the telephone?

A. Yes.

Q. Mr. Stephenson, I show you——

The Clerk: Let me have that and mark it, please.

The Court: 58, for identification. [1431]

(The document referred to was marked Plaintiff's Exhibit 58, for identification.)

Mr. Diether: 58, your Honor?

The Court: 58. What is the date of it?

Mr. Bunn: August 9, 1946.

The Court: August 9th?

(Testimony of George M. Stephenson.)

Mr. Bunn: Yes, your Honor.

Q. (By Mr. Bunn): I show you what purports to be a carbon copy of a letter on your letterhead, that is, the letterhead of Loucks, Phister, Baker & Stephenson law offices at 413 West 7th Street, San Pedro, California, dated August 9, 1946, directed to Matson Navigation Company, 550 South Grand Avenue, Los Angeles, California, and ask you if you have ever seen that actual document before.

A. Yes, I have.

Q. What is it, Mr. Stephenson?

A. It is a copy of a letter that I wrote to the Matson Navigation Company on——

Mr. John Morrow: We can't hear you.

The Witness: I am sorry. It is a copy of a letter that I wrote to the Matson Navigation Company on August 9, 1946, and which I delivered personally to the Matson Navigation Company, by delivering it to Mr. Banning at 550 South Grand Avenue, and it is receipted for by Mr. Banning of the Matson Navigation Company. [1432]

Q. (By Mr. Bunn): And the date of the receipt form on the bottom of the second page is what date?

A. August 9, 1946.

Q. And did you see Mr. Banning sign that receipt?

A. Yes, I did.

Q. Now, does that letter refresh your memory as to any of the conversation which took place in Matson's office on the day before, as you have [1433] testified?

(Testimony of George M. Stephenson.)

The Witness: I have already refreshed my recollection, and I now remember the substance of the conversation and the fact that I had the conversation.

Q. (By Mr. Bunn): Will you tell us what the conversation consisted of, that is, what Mr. Banning said to you and what you said to Mr. Banning?

A. I can only tell you in substance, but I told Mr. Banning that I represented Gonzalez & Blanco and—— [1434]

Mr. Bunn: You will have to speak loudly. The acoustics in here are very bad.

The Court: And if you will stand back there, he will talk to you.

Mr. Bunn: Thank you.

Mr. John Morrow: Pardon me. Could you remove the letter from the witness? He said he has already refreshed his recollection.

Mr. Bunn: The witness has put the letter on the judge's desk.

The Witness: That was the first time I met Mr. Banning, and I introduced myself and told him I represented Gonzalez & Blanco, and, in substance, I told him that our clients had made contracts for the sale of this wire.

Mr. Laven: Just a moment. I don't believe the entire foundation has been laid, as to where the conversation took place.

The Court: Yes. It was at Grand Avenue, and Grinstein was present with him, and it was the day

(Testimony of George M. Stephenson.)

before the date of the letter of August 9th, which would make the conversation on August 8th.

Mr. Laven: All right.

The Witness: I told him our client had made contracts for the sale of the wire, and that we had to get that wire off the dock down there at Long Beach, and that we wanted [1435] good wire. And he told me that—he said, “As you already know,” or something to that effect, “the wire is mixed.” “It became mixed in loading, and there is another principal involved who expects wire,” and he said, “and we are not going to let you take all good wire. You can take the amount of wire that your bill of lading calls for, but you have to take it without regard to type or condition.”

And I told him that we wouldn't do that, that we wanted good wire, and we wanted the kind of wire our bill of lading called for. That's all I remember of the conversation.

The Court: What did he say then?

The Witness: I don't think he said much of anything else. I know he didn't promise to comply with our demands. But one other thing I recall about that conversation. He told me that—or, I asked him whether or not there was any way that the Matson Navigation Company could determine which wire belonged to which person, and he told me, no, there was not, that the wire was not tagged or marked or identified in any way so that they could determine which wire was to go to which. And that's all I remember of the conversation.

(Testimony of George M. Stephenson.)

Q. (By Mr. Bunn): Did Mr. Grinstein participate in that conversation by saying anything?

A. Well, if he did, I don't now remember.

Q. That is all on August the 8th?

A. Yes, sir. [1436]

Q. Now, what, if anything, did you do in regard to the Matson Navigation Company the next day?

A. Well, I wrote a letter to Matson Navigation Company.

Q. Is that the letter I have shown you a copy of?

A. Yes, a copy of it. I went to the Matson Navigation Company at 550 South Grand. I went to the Matson Navigation Company at 550 South Grand, saw Mr. Banning, and delivered him the original of the letter, and asked him to receipt on the copy of the letter.

Q. Was there anybody else present in that conversation besides you and Mr. Banning?

A. I don't believe so.

Q. Do you remember whether it was morning or afternoon?

A. I think it was right about noon.

Q. Now, did you thereafter have any conversation with anybody in the War Shipping Administration office——

A. Yes.

Q. ——at San Francisco, about the same transaction?

A. Yes, I did. [1437]

* * *

Q. (By Mr. Bunn): How soon thereafter did you have your first contact with the War Shipping Administration on this transaction?

(Testimony of George M. Stephenson.)

A. Well, I am not certain. I can only guess that it was about a week later. It may have been a few days later.

Q. And how was that contact made?

A. Mr. Ball called me.

Q. And what conversation ensued between you and him on the phone then, that first time, as distinguished from any subsequent ones, if there were any?

A. Well, may I make an explanation?

Q. The witness can always explain his answer, I think.

A. I talked with Mr. Ball on perhaps five, maybe ten occasions.

Q. About this transaction?

A. About this transaction, and I don't remember any conversation that I had with him in any one of those telephone conversations, except that I remember the last one or two conversations that I had with him. I know what we talked about, and I know what he told me in the last conversation [1438] but we were talking about this wire business all the time.

Q. Are you able to give the substance of the conversations earlier than the last, even though you are not able to distinguish the one conversation as to time from the one that followed it? A. Yes.

Q. All right. What was the substance of those conversations, prior to the last?

A. That my letter had reached his desk.

Q. Did he identify the letter of August 9th?

(Testimony of George M. Stephenson.)

A. Well, I don't know whether he identified it in that way, but I had called upon Matson Navigation Company in the letter to give us some sort of answer, and to tell us what they were going to do.

Q. Had you written any other letter between your August 8th conference with Mr. Banning and the telephone conversations you are talking about now? A. No, sir, I had not.

Q. All right.

A. Mr. Ball told me he represented the War Shipping Administration, and he identified himself as the Mr. Ball I had dealt with previously, and at that time he was with the law firm of Thatcher, Jones & Casey of San Francisco. Then we discussed the wire problem. I don't remember what we said in the first part of any conversation, but sometime along the [1439] line, and it probably was in the first conversation, I told Mr. Ball my clients had an order bill of lading that called for so much wire in good condition, and that we expected to have just that much wire in that condition. And I don't remember what he said to that, but later on I cited some cases to him. I remember citing him the case of Carso, reported in 46 Fed. 2d, which is a case on an order bill of lading or a bill of lading. Finally Mr. Ball called me—no, I am losing the sequence. I told him that, as I saw it, he was going to have two law suits, because there were two people involved in the wire on the dock at Long Beach, and that, as I saw the situation, that he would be much better off to have one law suit instead of two, and that I

(Testimony of George M. Stephenson.)

figured that we would be a lot tougher to handle than the other principal would, because we had an order bill of lading. And in the last conversation I had with him, he called me and said, "I have instructed the Matson Navigation Company to let your clients go in and pick their wire. So go ahead."

Q. And did your clients go ahead and do so?

A. Well, I told them to, and I haven't heard any complaints from them since, so I assume they did.

Q. Did you thereafter—no—did you at any time after August 9, 1946, the date on which you received the receipt from Mr. Banning for the original of the letter, have [1440] any personal conversation with Mr. Banning? A. Not that I recall.

* * *

Mr. Bunn: Oh, I beg your pardon. I want now to offer the letter in evidence, and the receipt form by Mr. Banning.

* * *

The Court: The subsequent conversations the witness has testified to with Mr. Ball, and the form of the letter being a demand takes it out of the rule for the purpose of refreshing the witness' recollection. The objections are overruled, and the document is admitted.

(The document, heretofore marked Plaintiff's Exhibit 58 for identification, was received in evidence.) [1441]

* * *

(Testimony of George M. Stephenson.)

Cross-Examination

By Mr. John Morrow:

Q. Mr. Stephenson, you had this conversation with Mr. Banning on about August 9th, 1946. That was the date you said, didn't you?

A. No, I said August 8th.

Q. August 8th. Did he inform you to the effect that he could do nothing, that is, Matson could do nothing without consulting the War Shipping Administration?

A. I don't remember, sir, whether or not he told me that, but I have refreshed my recollection to this extent. He told me that Matson Company was the agent for the War Shipping Administration, as I recall.

Q. Did he mention the words "berth agent"?

A. Well, I don't remember.

Q. But you do recall that Mr. Banning did state that Matson was the agent for the War Shipping Administration? A. I do recall that.

Q. Does that refresh your recollection as to whether Mr. Banning said, in substance, to you that Matson would have to consult the War Shipping Administration before replying to your demands?

A. I don't recall that, sir, and if you want an explanation—I don't believe that he told me that. If you would like an explanation, I will give it to you. [1442]

The Court: Do you desire to explain your answer—

(Testimony of George M. Stephenson.)

The Witness: Yes, I do.

The Court: —in order that your testimony will speak the truth?

The Witness: Yes. I don't believe Mr. Banning told me that, but the only recollection I have for that belief is because I remember being very astonished to have Mr. Ball of the War Shipping Administration in San Francisco be the first one to respond to my letter.

* * *

Q. (By Mr. John Morrow): When you talked to Mr. Ball on the phone in one of these conferences you mention, he informed you, did he not, that the War Shipping Administration was deciding or was making the decision as to the demands made by you in your letter of August 9th?

A. Well, sir, I don't believe he stated it in just that way. I had the impression that the War Shipping Administration was involved in determining what they were going to do with us with our wire.

Q. That was the impression you had at the time you [1443] talked to Mr. Ball? A. Yes.

Q. Your impression was never changed in that regard at any other date? A. No.

Q. You got that impression from whatever Mr. Ball told you? A. Yes.

* * *

(Testimony of George M. Stephenson.)

Cross-Examination

By Mr. Laven: [1444]

* * *

Q. Did you have any knowledge that it was shipped in one large—that there was other wire shipped by Dulien, which included the Gonzalez & Blanco shipment?

A. Well, my understanding was that all of this wire that was on the dock in Long Beach all arrived in the same ship.

Q. And in addition to the amount of wire that was shipped for Gonzalez & Blanco, do you know how much other wire was shipped on the same vessel?

A. I don't know that. I went down to the dock, and it looked like acres of wire to me. [1445]

* * *

Q. Now, did you see the wire down on the dock.

A. Yes, sir.

Q. Did you see any marks or tags on it—any tags two inches high marked “Gonzalez & Blanco” on either wire?

A. Well, I didn't see any tags on the wire. Of course, I didn't examine the whole pile.

Q. Did you see any markings of any kind identifying the wire?

A. I don't believe I did, but when I went down to the dock to examine the wire, I was looking—I was primarily interested in determining whether or not there was any marking on the wire which

(Testimony of George M. Stephenson.)

would indicate that the wire belonged to Gonzalez & Blanco.

Q. Did you find such indication?

A. I don't believe I did.

Q. Well, do you recall? Can you refresh your recollection, and tell us whether you did or not?

A. All I have is a belief. I don't believe I did, sir. [1446]

* * *

Q. (By Mr. Laven): Didn't you testify on direct examination that Mr. Banning said the wire was not tagged or identified in any manner?

A. I testified that Mr. Banning told me that there was no marking or tagging on the wire to indicate which wire would belong to Gonzalez & Blanco and which wire belonged to the other principal involved.

Q. Now, in your conversation with Mr. Ball, you told him that you had a clean order bill of lading, did you not? A. Yes, I did.

Q. And that he told you in reply to that, when he finally gave you an answer, that because you had the clean order bill of lading that you had a right under the bill of lading to select what the bill of lading called for?

A. Well, I think he felt that was the only way out of the difficulty. The bill of lading didn't get—

Q. I am asking just what he said, not what he felt, sir. I am asking what he told you.

A. Now, repeat your question. [1447]

Mr. Laven: Will you read the last question, please?

(Testimony of George M. Stephenson.)

(The question referred to was read as follows: "Q. And that he told you in reply to that, when he finally gave you an answer, that because you had the clean order bill of lading that you had a right under the bill of lading to select what the bill of lading called for?")

The Witness: No, he didn't tell me that we had any right to make any selection.

Q. (By Mr. Laven): He didn't tell you that?

A. No.

Q. What did he tell you?

A. He said that we were entitled to have what the bill of lading called for, so much wire in good condition, and he said, "You may go select it." But I don't believe he said we had a right to make a selection. [1448]

* * *

RUSSELL H. MATHER

called as a witness by and on behalf of the plaintiff, having been previously sworn, resumed the stand and testified further as follows:

Cross-Examination

By Mr. Dasteel:

Q. Mr. Mather, yesterday afternoon you testified that you sold a quantity—rather, that you purchased a quantity of barbed wire from Londono and paid \$51.00 a ton for it. Do you recall that?

A. Yes.

(Testimony of Russell H. Mather.)

Q. Did you resell that wire? A. Yes.

* * *

The Court: When did you sell it?

The Witness: Over a period of 60 days, or longer than that. [1449]

The Court: In 1947 or——

The Witness: It was in 1947.

The Court: Beginning with? Is this the April sale of wire?

Mr. Dasteel: That is the wire that he purchased from Londono at \$51 a ton.

The Court: Well, when? What is the evidence on it?

Mr. Bunn: The evidence is that it was in 1946, in October, under the contract of October 22nd, but delivered up through and into December, I believe.

The Court: The objection to the question is overruled. You may answer, Mr. Mather, what you received for this wire.

Mr. Bunn: Will counsel fully determine whether he did anything to the wire before he sold it?

Q. (By Mr. Dasteel): Well, this wire that you purchased at \$51 a ton, did that price include any pickled wire? A. No, sir.

Q. Did you process the wire at all?

A. Yes.

Q. After paying \$51 per ton, what did you do in the way of processing?

A. We made a contract with Bernard Epps and Contractors Supply Company for the pickling of that wire.

(Testimony of Russell H. Mather.)

Q. How much a ton did you pay for the processing?

A. We paid from \$20 to 40—around \$43, I think it [1450] was.

Q. Now, tell us what you sold this wire for, after it was processed?

A. To tell you that, I would have to get the records. There were many, many sales on it, and the prices varied.

Q. Have you any recollection at all of the price per ton?

A. I made no contracts for the sale of the wire. They were all——

* * *

Q. (By Mr. Dasteel): How much of that wire was processed—all of it?

A. All of it except the remaining tonnage which was determined to be junk.

Q. I am talking about the \$51-a-ton wire which you purchased. Is that it? A. Yes. [1451]

* * *

Q. (By Mr. Dasteel): You testified that Gonzalez & Blanco sold the wire which you purchased from Dulien for a price of between \$160 and \$180, delivered F.O.B. South America.

Mr. Bunn: Object to the question.

The Witness: I didn't testify to that.

Q. (By Mr. Dasteel): What did you testify?

A. I testified that the market value was \$160 to \$180.

(Testimony of Russell H. Mather.)

The Court: C.I.F.

The Witness: C.I.F. or C. and F.

The Court: What is "C. and F."?

The Witness: Cost and freight.

The Court: Cost and freight?

The Witness: Yes, sir. [1453]

* * *

The Court: * * * If the market value was \$160 to \$180 a ton C.I.F. or C. and F., say, at Panama, how much would the cost of freight be to Panama?

Mr. Bunn: If he knows.

The Court: If he knows.

The Witness: It would be a guess. Approximately \$20 to \$22 a ton.

Mr. Dasteel: I didn't hear the answer.

The Court: \$20 to \$22 a ton, he guesses. [1454]

* * *

The Court: Do you ship any to Colombia, or do you know the freight rate to Colombia per ton?

The Witness: Around \$22 to \$25, I think.

Mr. Bunn: That is by water, isn't it?

The Witness: By water.

Q. (By Mr. Dasteel): I refer you to Exhibits 51, 52, 53, and 54, and ask you the market value in Los Angeles, as between July and November, 1946, of Exhibit No. 54? A. I will have to look at it.

Q. All right.

(Testimony of Russell H. Mather.)

(Witness examines wire.)

The Court: 51 is on your right, and they go on to 54, which is the black wire.

The Witness: This is 54?

Mr. Dasteel: Yes, that is.

The Witness: \$120 to \$140.

The Court: Los Angeles free on board?

The Witness: That would be our delivered price. We would gauge our price in accordance with the delivery.

The Court: He is asking about the market price.

Mr. Dasteel: Los Angeles.

The Witness: We sold no wire in Los Angeles. I don't know.

Q. (By Mr. Dasteel): But you would base your price on Los Angeles at all times, would you [1455] not? A. No, we would not.

* * *

Mr. Bunn: But he said without the records of Gonzalez & Blanco he can't answer those questions. [1456]

* * *

The Court: With wire like Exhibit 54, what would you get in Mexico City per ton?

* * *

Mr. Bunn: I am going to object to the Mexico City because that goes by rail, transportation by rail. [1457]

Mr. Dasteel: Take a seaport.

(Testimony of Russell H. Mather.)

The Court: Say, a seaport in South America, Panama, if you know.

Mr. Bunn: To which transportation could be made by water, if the court please?

The Court: Yes.

* * *

The Court: Would you answer the question I asked?

The Witness: Between \$120 and \$140 per ton.

The Court: That is to say, the seller would have to pay the freight?

The Witness: We had so many. I will have to think just a minute. It would either be—to South America it would be a delivered price ranging between \$120 and \$140. [1458]

* * *

Q. (By Mr. Dasteel): Well, where did you ship wire to? What part of South America?

A. We shipped our wire to Venezuela. I think we shipped some to Colombia. I would have to check the records to find out. It has been four years ago. I don't remember all the countries. The majority of the wire I will say went to Mexico.

Q. Then the freight shipment of the wire, then, could have been by boat? A. It was.

Q. All right. Now, then, your testimony is that the price delivered in South America was between \$120 and \$140 a ton for Exhibit No. 54. Now, look at Exhibit No. 53. What would the price be on that wire? [1459]

* * *

(Testimony of Russell H. Mather.)

The Witness: In its present condition?

Q. (By Mr. Dasteel): Yes, as it appears to you.

A. It would be unsalable.

Mr. O'Malley: Is the witness basing that as of the time of this transaction or as of the present time?

The Witness: At the time of the transaction.

Q. (By Mr. Dasteel): At the present time would you say that this would be unsalable? Is that your testimony as an expert, that that is unsalable?

A. That we could not sell that wire.

* * *

Q. (By Mr. Dasteel): I draw your attention to Exhibit No. 52. What would your answer be to the same question?

A. We could not sell it in that condition. [1460]

* * *

Q. And what price would have been the reasonable market value or market price on Exhibit No. 51 in the same period you have testified as to the market price of Exhibit No. 54?

The Court: In ton lots?

Mr. Dasteel: In ton lots, yes, your Honor.

The Witness: Between \$160 and \$180.

The Court: That is delivered?

The Witness: Yes, sir.

The Court: To any point?

The Witness: To the various points.

The Court: To the northern points of South America?

(Testimony of Russell H. Mather.)

The Witness: Yes, sir.

Q. (By Mr. Dasteel): Drawing your attention again to Exhibits No. 52 and 53, could both or either one of those be processed at this time so that there would be a market price for it? A. Today?

Q. Yes. A. No, I don't think so.

Q. As of that time, 1946? A. Yes.

Q. That would have been salable in 1946?

A. After processing. [1461]

Q. After processing. And then what would the market price be——

The Court: For which one?

Q. (By Mr. Dasteel): For No. 53 first, after processing. A. Between \$120 and \$140.

Q. And 52? A. They are both the same.

* * *

Mr. O'Malley: I will have a very few questions.

Cross-Examination

By Mr. O'Malley:

Q. Mr. Mather, I believe you testified that you made a purported selection of your wire in Honolulu sometime in May, 1946; is that correct?

A. Yes.

Q. And that was subsequent to your purchase of the wire; is that correct?

A. No, sir. It was subsequent?

Q. Yes. A. Yes, it was.

Q. It was after the purchase of the wire. Now,

(Testimony of Russell H. Mather.)

this so-called selection was made in Honolulu; is that correct? A. Yes.

Q. And when you made this so-called selection, did you [1462] ever make a segregation of your 1500 tons of wire into a separate lot or lots, which you could identify as the wire belonging to Gonzalez & Blanco? A. No.

The Court: That is in Honolulu?

Q. (By Mr. O'Malley): In Honolulu?

A. No.

Q. Did you place any labels or identifying marks on it in any way? A. No.

Q. Now, when the vessel, the White Squall, docked in Long Beach, and I believe the date is in evidence as being July 26, 1946, you made an examination of the wire in the hold of the ship; is that correct? A. Cursory.

Q. You did see the wire in the hold of the ship?

A. Yes.

Q. And did it there have any labels or identifying marks on it in any way? A. No.

Q. And could you then and there identify the wire that you purchased? Could you identify a lot of 1500 tons of wire that you had purchased in the hold of the ship? A. No. [1463]

* * *

The Court: By the way, if I may interrupt. While you are still in Honolulu——

Mr. O'Malley: Yes.

The Court: ——did you remain there while the bill of lading was made out?

(Testimony of Russell H. Mather.)

The Witness: No, sir.

The Court: You were not there when the loading began or finished? [1464]

The Witness: No, sir.

The Court: Did you leave any person there and designate him as your representative in connection with the loading or making out of the bill of lading?

The Witness: We had a representative there supposedly to protect our interests in the loading or placing on the dock of the wire.

The Court: Who was that?

The Witness: Mr. Porter, of MacDonald & Porter.

* * *

Q. Very well. Now, going on a little bit to the transaction in which you purchased barbed wire from Mr. Londono. I think it is in evidence, Mr. Mather, that that purchase was made on the date of October 24, 1946. [1465]

Mr. Diether: 22.

Mr. Bunn: The contract is dated the 22nd, Mr. O'Malley.

Mr. O'Malley: Very well.

The Court: I think it was signed on the 24th.

Mr. Bunn: It was signed on the 24th, and dated the 22nd.

Mr. O'Malley: Very well.

Q. (By Mr. O'Malley): Where was the wire at the time you made your purchase? Where was it physically located? A. Pier A, Long Beach.

(Testimony of Russell H. Mather.)

Q. Over what period of time did Gonzalez & Blanco pick up the wire? By that I am referring now to the Londono wire.

A. My recollection is that it was a period of months, with an interruption because of labor trouble.

Q. Very well. Now, approximately how many months ensued during which you picked up that wire, to your best recollection?

A. I would say probably six or seven.

Q. Between six and seven months, is that your best estimate of the time? A. That's correct.

Q. Very well. Now, between the date of the contract, which was October 22nd, and the date when you finally picked up all of your wire, the portion which had not been picked up [1466] remained on the dock; is that correct? A. That's right.

Q. Do you know whether it was under—it was in an open space and it was unguarded; is that correct?

A. It wasn't unguarded. I imagine they give you protection. After all, you paid storage space.

Q. Do you know whether it was under any kind of guard, or is that merely your conclusion?

A. It is my conclusion due to the fact that the dock in holding property for shippers or receivers is responsible for quantities.

Q. It is merely your conclusion that it should have been under guard; is that correct?

A. I assumed that it was.

(Testimony of Russell H. Mather.)

Q. (By Mr. O'Malley): Now, at the time the wire was [1467] purchased, on or about October 22nd, did you make any physical count of the wire in any way? A. No.

Q. You did not? A. No.

Q. You did not weigh the wire? A. No.

Q. And you did not count the rolls?

A. No.

Q. So you don't know how much was on the dock at the time you purchased it; is that correct?

A. Just an estimate.

Q. It was merely an estimate on your part?

A. Right.

* * *

Q. (By Mr. O'Malley): Is it your testimony, then, that [1468] the market value C.I.F. a northern port in South America is approximately \$160 to \$180 per ton for Exhibit 51, for identification? That is the galvanized barbed wire. Is that correct?

A. Yes.

Q. And with respect to Exhibit 54, which is the wire you testified was good black wire, I believe it is your testimony that it had a value C.I.F. a northern port of South America of \$120 to \$140 a ton; is that right? A. Yes.

Q. And you testified that you paid \$51 a ton for the wire purchased from Londono; is that correct?

A. We paid \$51 to Londono.

The Court: Which one of those exhibits would that correspond to, if any?

(Testimony of Russell H. Mather.)

The Witness: 52 and 53, and similar wire. [1469]

* * *

Q. (By Mr. O'Malley): Now, do you know the fair market [1472] value in Los Angeles during the period in question, namely, from July, 1946, to December, 1946, of barbed wire of the standard of Exhibit 51, for identification, namely, the galvanized barbed wire for transshipment out of the United States?

Mr. Bunn: To where?

Q. (By Mr. O'Malley): To a South American port? A. Yes.

Q. And what is that?

A. \$160 to \$180 a ton.

The Court: C.I.F.?

The Witness: C.I.F.

The Court: That is cost and freight paid, the delivered price?

The Witness: Yes.

Q. (By Mr. O'Malley): And with respect to Exhibit 54, for identification, namely, the wire which you have testified is good galvanized black wire, what is the fair market value in Los Angeles for transshipment to a South American port of wire of that character? [1473]

* * *

A. \$120 to \$140 per ton.

The Court: Delivered?

The Witness: Delivered.

* * *

(Testimony of Russell H. Mather.)

Mr. Bunn: May I make one comment, and then I will try to hush on that score. I call the court's attention to the fact that it is clearly in evidence here, and exclusively so, that Mr. Londono's expressed intention, both to Dulien and to Mr. Schroeder at the bank, was that this wire was all in theory before he saw it to be shipped to South America. None of it was to be sold here.

The Court: I am aware of that. I am also aware of the fact that you consider it a part of your obligation, as Mr. Londono's counsel, to show a good faith effort to mitigate the damages.

Mr. Bunn: Yes, sir.

The Court: And that according to the evidence so far introduced, [1474] there was a certain amount of the wire which could not be transshipped and sold in South America.

Mr. Bunn: Right, sir.

The Court: And it had to be sold here. Therefore, it becomes material sooner or later in this trial as to what the fair market value of barbed wire was here.

Mr. Bunn: But there was none of the good character available for him to sell here. [1475]

* * *

Mr. Dasteel: Your Honor please, in the noon hour we would like the court's permission—I believe Mr. Morrow would, too, and Mr. Diether, and Mr. Laven, as well as myself, although I don't know whether Mr. Laven knows what I am going to ask,

(Testimony of Russell H. Mather.)

but he is included—to cut samples just about seven inches long off the four rolls? We have clippers here.

Mr. Bunn: No objection.

The Court: Very well. [1477]

* * *

The Court: But they will be marked for identification, and taken out with the tag on. [1478]

* * *

The Court: That is right. They will be 51-A, -B, -C, and -D I think, Mr. Clerk, that we might mark them according to the designations we have given the different defendants, that is, the one taken by Dulien will be 51-D, the one taken by the bank will be 51-C, and the one taken by Matson will be 51-M, and the one taken by the government will be 51-US.

(The samples referred to were marked Plaintiff's Exhibits 51-D, 51-C, 51-M, and 51-US, for identification.) [1479]

* * *

(The samples referred to were marked Plaintiff's Exhibits 52-D, 52-C, 52-M, and 52-US, for identification.)

* * *

(The samples referred to were marked Plaintiff's Exhibits 53-D, 53-M, and 53-US, for identification.)

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